

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 17829 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PIYUSH AMBALAL GANDHI

Versus

DY COMMISSONER OF INCOME TAX CIRCLE 2

Appearance:

MR KETAN H SHAH(2705) for the Petitioner(s) No. 1

MR. AMAN K SHAH(9992) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**

and

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 11/11/2022**

**CAV JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Heard learned advocate Mr.Ketan Shah for the petitioner

and learned advocate Mr.Varun K. Patel for the respondent, at length.

2. The challenge in this petition is directed against notice dated 29.3.2018 issued to the petitioner by the Assessing Officer under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment in respect of assessment year 2013-14. In the said notice it was stated by the Assessing Officer that he had reasons to believe that income in the hands of the petitioner chargeable to tax for the year under consideration had escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Also challenged is order dated 16.10.2018 passed by the respondent Assessing Officer whereby he disposed of the objections of the petitioner against reassessment, rejecting the same.

3. Noticing the basic facts, the petitioner filed his return of income for the assessment year 2013-14 on 27.9.2013 showing total income of Rs.16,38,170/- after claiming rebate in respect of life insurance premium, housing loan etc. restricting to Rs.1,00,000/- and further claim was also made under Section 80G of the Act. The petitioner stated that he did not put forth any claim under Section 80C in respect of the investment made with Bajaj Alliance Insurance Private Limited. It was stated that thereafter by letter dated 21.11.2017 and others, the Assessing Officer asked the petitioner to provide clarification regarding premature surrender of policy of Bajaj Alliance which was surrendered on 21.11.2012. Reply was filed by the petitioner, in which, stated the petitioner, he furnished the source of investment and other details. He further mentioned that he had

never claimed any relief under Section 80CCC of the Act in respect of the pension policy of the Bajaj Alliance Private Limited.

3.1 It was thereafter that the notice under Section 148 dated 29.3.2018 was issued to the petitioner seeking to reopen the assessment. The reasons for reassessment was supplied by letter dated 28.9.2018. The petitioner filed his objections on 15.10.2018. The petitioner *inter alia* stated that he had not made any claim under Section 80CCC (1). The objections of the petitioner came to be disposed of and rejected by the Assessing Officer as per the order dated 16.10.2018.

3.2 In the reasons recorded by the Officer for reopening, it was given out that the petitioner- assessee made investment of Rs.8,10,000/- each dated 28.3.2006, 5.4.2007 and 25.12.2012 and Rs.24,30,000/- on 16.10.2012 totaling Rs.48,60,000/- in the pension policy of the Bajaj Alliance. The assessee surrendered the same, it was stated, for the value of Rs.59,89,740/- on 21.11.2012 much before the maturity date of the policy, which was 28.3.2015. Thus the gain of Rs.11,29,740/- received by the assessee on account of premature of the policy was required to be offered for taxation in the assessment year 2013-14 as per the provisions of Section 80CCC (2), however in the return filed for the year 2013-14 such amount was not offered for taxation.

3.3 While on such basis the reassessment was sought to be acted upon, it was further stated by the Assessing Officer in the reasons recorded that as per the information received from the Income Tax Officer, (I&CI), Bharuch. The assessee had not

claimed the benefit under Chapter VI-A, the accretion value of Rs.11,29,740/- was required to be brought to tax under Section 56 of the Act and further that the source of the total amount of Rs.32,40,000/- (Rs.8,10,000 + Rs.24,30,000) invested in the policy was required to be examined. The Assessing Officer observed that on such facts he had reasons to believe that the income to the extent of Rs.11,29,740/- chargeable to tax had escaped assessment within the meaning of Section 147 of the Act.

3.4 In the objections raised, the petitioner submitted that earlier inquiries were made by the Officer through letters dated 21.11.2017, 11.12.2017 and 19.12.2017 which were replied to on 18.12.2017 and 1.1.2018 and that necessary information was furnished. It was stated that the source of investment was demonstrated, whereafter no further inquiry was found necessary by the Officer; the chart was given depicting the details of investment made during various financial years, and also was furnished letter of the Bajaj Alliance Private Limited to further show that no claim was made in respect of the said investment in the policy, therefore, provisions of Section 80CCC (2) of the Act were not applicable, pointed out the petitioner.

3.5 The Assessing Officer however did not accept the objections and recorded that the assessee had not offered the gain of Rs.11,29,740/- earned out of premature surrender of policy. According to the Assessment Officer, the income had escaped to the said extent.

4. Learned advocate for the petitioner assailing the impugned

notice and the order of rejection of objections submitted that despite the information and necessary clarification provided to the Assessing Officer, the same were not considered. What learned advocate for the petitioner highlighted was that the assessee never claimed relief under Section 80CCC (1) of the Act, therefore question of applicability of Section 80CCC (2) of the Act could not arise.

4.1 In support of his submissions, learned advocate for the petitioner relied on the decision of Division Bench of this court in **Ami Ashish Shah Vs. Income Tax Officer [(2022) 440 ITR 417 (Gujarat)]** in which case the reopening notice was issued on the ground that the amount of bonus received by the assessee upon premature surrender of the pension plan was claimed exempt under Section 10 (10D) of the Act, was actually not exempted under Section 80CCC (2), however the reopening notice issued after four year was held to be unjustified since any fresh tangible material has not come into possession of the Assessing Officer as held by the court. Learned advocate for the petitioner relied on decision also in **Swati Malove Divetia Vs. Income Tax Officer [(2018) 98 taxmann.com 447]** by highlighting that in pre notice queries, the Assessing Officer having asked the assessee the source of cash deposits and assessee having disclosed them, it was not open for the Assessing Officer to subsequently reopen the assessment. Reliance was placed on decision of this court in **Principal Commissioner of Income Tax Vs. Manzil Dineshkumar Shah [(406) ITR 326]** to submit that fishing inquiry was not permissible and another decision in **Krupesh Ghanshyam Thakkar Vs. Deputy Commissioner of Income Tax being**

**[Special Civil Application No.14612 of 2016]** decided on 29.11.2016, to submit that mere verification could not be a ground to reopen the assessment.

4.2 Learned advocate for the respondent relied on the affidavit-in-reply filed on behalf of the respondent to reassert that the gain of Rs.11,29,740/- was the income which had escaped the assessment and the information is received that the assessee had not claimed benefit under Chapter VI-A, the accretion value as above was to be taxed under Section 56 of the Act. It was submitted that Assessing Officer had arrived at necessary satisfaction with reason to believe that it was fit case to be reopened. It was contended that the assessee's case that relief was not claimed under Section 80CCC (1) was not only erroneous but was an irrelevant consideration.

4.3 In support of the stand taken, learned advocate for the respondent relied on the decision in **Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Private Limited ((2007) 291 ITR 500 (SC))** in which the phrase 'reason to believe' was explained. Another decision of the Supreme Court was also relied on in **Raymond Woollen Mills Limited Vs. Income Tax Officer [(1999) 236 ITR 34 (SC)]** to submit that when there was *prima facie* material available, the department could reopen the case.

5. Having considered the compass of the controversy and the rival contentions raised, it is to be noticed that prior to the impugned notice dated 29.3.2018 under Section 148 of the Act, the Assessing Officer had proceeded to subject the assessee to

inquiry seeking information about the premature surrender of the policy of Bajaj Alliance Private Limited. The details with reference to policy No.19031604 dated 23.8.2006, the premium of Rs.48,60,000/-, the maturity date 23.8.2015 and surrender date 5.11.2012, the amount paid of Rs.59,89,740/- on 21.11.2012, were furnished by the petitioner - assessee, as also given were the details regarding source of funds utilized for the purchase of pension policy, the attendant details including whether any deduction was claimed under Chapter VI of the Act. The copy of the return of the income and the statement of income for the financial year 2012-13 relevant to assessment year 2013-14 were also called for. The very details were again asked for by communication dated 11.12.2017. The petitioner replied to furnish such details by letters dated 18.12.2017 and 1.1.2018.

5.1 The assessee supplied the following details during regular assessment proceedings.

(i) A detail chart of premium paid and redemption amount received from the insurance company to show that the assessee paid pension amount from 2006 to 2012 totaling to Rs.48,60,000/- and premature redemption amount was Rs.59,89,740/-.

(ii) Ledger copy of Bajaj Alliance Private Limited was submitted which mentioned the following details. (a) Accounting year 2005-06- Rs.8,10,000/- from Piyush Ambalal Gandhi. (b) Accounting year 2007-08- Rs.8,10,000/- from Jasumatiben A. Gandhi. (c) Accounting year 2012-13- Rs.32,40,000/- from Piyushkumar A.

Gandhi.

(iii) Entries of pages from bank Development Finance Corporation Accounts of Housing.

(iv) Redemption paper from Bajaj Alliance Private Limited of Rs.59,89,740/- date 23.11.2012.

(v) Copy of the bank account of the HDFC and statement of Piyush Ambalal Gandhi.

5.2 In response to further queries raised on 11.12.2017, the assessee filed computation and acknowledgement sheet for all the assessment years to show that he had not claimed deduction under Section 80CCC (1) of the Act for investment under Chapter VI-A. Also furnished was the source of the amount paid on different occasion towards policy which were all by cheques and the details of the cheque numbers were also made available. The assessee informed the Income Tax Officer that since he had not claimed any deduction as expenditure or under Chapter VI-A, the amount received upon premature surrender was not liable to be offered to tax. The computation of income reflected in the returns of income for the three different assessment years that is 2013-14, 2006-07 and 2008-09 were produced, and also figured on the record of the petition which fortified that the deduction was not claimed by the petitioner in respect of the investment in the insurance policy.

5.3 Therefore, it is evident that the facts relating to issue on the basis of which the reopening of the assessment was sought

to be acted upon were earlier called for by the Assessing Officer and all such information was supplied by the petitioner- assessee. The petitioner- assessee clarified its stand with clear and convincing facts relating to the investment by him in the pension policy, source of funds applied and further pointing out that the deduction was not claimed in that regard under the relevant provisions rendering the receipt of surrender value not liable to be offered to tax.

5.4 On the facts operated as above, the case of the department that the petitioner had received the surrender value of policy upon its premature redemption and the same was liable to tax under Section 80CCC (2) of the Act, stands erroneous. Once it is a position obtained that the petitioner- assessee had not obtained a relief under Section 80CCC (1) of the Act, the redemption amount of the policy prematurely surrendered would not be liable to be taxed.

5.5 This aspect would be clear on bare reading of Section 80CCC of the Act. Section 80CCC deals with the deduction in respect of contribution to certain pension funds to provide in Sub section (1) that where any individual assessee has in the previous year paid amount out of his income chargeable to tax in respect of annuity plan of Life Insurance Corporation of India, such amount shall be allowed deduction in computation of total income. Sub section (2) says that any amount standing to the credit of assessee referred in Sub section (1) which was allowed deduction along with the bonus etc. would be liable to tax upon surrender of annuity plan or as a pension received from such plan. Therefore, the condition for taxability of policy surrender

value is that the amount invested was claimed as relief under Section 80CCC (1) of the Act which is not the case here.

5.6 It clearly appears that the Assessing Officer wanted to undertake a fishing inquiry in relation to issue, about which he had already solicited information and examined the same. The reassessment powers could not be exercised either for the purpose of reverification or to have a merry sailing for a rowing inquiry.

6. For the aforesaid reasons and discussion, the petition deserves to be allowed.

7. Resultantly, notice dated 29.3.2018 issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment in the case of the petitioner for the assessment year 2013-14 is hereby set aside. Also set aside is the order dated 16.10.2018 of the Assessing Officer disposing of and rejecting the objections of the petitioner to reopening of the assessment. The petition stands allowed. Rule is made absolute.

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**(N.V.ANJARIA, J)**

**(BHARGAV D. KARIA, J)**

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