

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11846 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 14786 of 2022**

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GLOBE ECOLOGISTICS PRIVATE LTD.**Versus****UNION OF INDIA**

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Appearance:**MR DARSHAN B GANDHI(9771) for the Petitioner(s) No. 1****DS AFF.NOT FILED (N) for the Respondent(s) No. 3****MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1****MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2**

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CORAM:HONOURABLE THE CHIEF JUSTICE MS. JUSTICE**SONIA GOKANI****and****HONOURABLE MR. JUSTICE SANDEEP N. BHATT****Date : 23/02/2023****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MS. JUSTICE SONIA
GOKANI)****ORDER IN SPECIAL CIVIL APPLICATION NO. 11846 OF 2022**

Special Civil Application No. 11846 of 2022 is under challenged where, this Court had issued the notice which is still pending.

Learned advocate Mr.Gandhi seeks to join Serious Fraud Investigation Organization at the behest of learned Sr.Standing Counsel represented by Mr.Karan Sangani.

Let the application be moved for joining the newly added

parties by learned advocate for the petitioner.

Stand Over to 10th April, 2023.

ORDERIN SPECIAL CIVIL APPLICATION NO. 14786 of 2022

On 7th February, 2023, learned advocate Mr.Gandhi had required to move the draft amendment for bringing on record the outcome of the assessment year 2013-14 and 2014-15.

The reply is filed denying on the correctness of the allegations. According to the respondent, A.Y 2018-19, the challenge where the notice issued under Section 148 of the Income Tax Act does not deserve to be entertained since, the petitioner has failed to disclose the certain vital details. On the basis of information received from the DDIT (Investigation) Unit 1(1), Ahmedabad through Insight portal, the Suspicious Transaction Report (STR) was generated by Finance Intelligence Unit of India in case of the assessee. The assessing officer had observed that the cash withdrawals of Rs.18.00 crores reported in STR appeared to be non-genuine and hence, for the A.Y.2018-19, he had issued the notice on the ground that the income has escaped assessment for not having taxed as per the provision of the I.T.Act.

It is not disputed that for the A.Y 2013-14, 2014-15, the cases of reopening have been dropped. Of course, according to the respondent as there is no relevance, the explanation of huge cash withdrawal in response to the notice under Section 148A(b) of the I.T. Act since it has not happened. Section 148A(d) order made it very clear that in absence of any supporting evidences, notice u/s. 148 of the I.T. Act was must which is also denied that there is in absence of lively tangible material suggesting escapement income.

We have heard Mr. Darshan Gandhi, learned advocate for the petitioner and Mr. Varun Patel, learned Sr. Standing Counsel for the respondent. It is only for the limited purpose of the grant of interim relief, this matter is being heard.

We noticed that though the allegation is of petitioner being Shell Company, for the AY. 2013-14 2014-15, the notice for reassessment had been dropped. Prima facie, there does not appear to be a case of Shell Company. However, what is objected by the Assessing Officer is the cash withdrawal of Rs. 18.00 crores. We could notice that the regular assessment has been already carried out, certain queries were raised by the Assessing Officer. The

scrutiny assessment had taken place under Section 143(3) of the I.T.Act. which eventually resulted into Assessing Officer passing an order.

After the same was over, at the behest of the DDIT investigation on the issue of the cash withdrawal of Rs.18.00 crores , the objections raised against the issuance of notice for reassessment for the very year had been challenged. Assessing Officer while disposing of the same as noted the aspect of scrutiny assessment and also dropping of the proceedings for the A.Y.2013-14 and 2014-15 on the ground that the aspect of cash withdrawal was not at any point of time examining by Assessing Officer, though the books of account and other material had been placed, has continued the proceedings and issued the notice u/s. 148 of the I.T.Act.

Since there was a scope of Assessing Officer for the scrutiny assessment at the time of scrutiny assessment, which is still in the grey area as to whether the aspect of cash withdrawal, he could not be noticed because of want of required material available to that but, to despite the scrutiny assessment which had undertaken. We are of

the opinion that the re-assessment shall continue. However, by way of interim relief, the opportunity to be given to the petitioner for producing before the officer concerned all the requisite material.

Let the final assessment order will not be passed without permission of this Court. The petitioner shall continue to co.operate. None of the findings and observations shall prejudice the rights of the parties before the Assessing Officer.

Mr.Varun Patel, learned Sr. Standing Counsel is permitted to produce the draft assessment order on record and thereafter, to move before the Registry for fixing the matter for final hearing.

(SONIA GOKANI,CJ)

(SANDEEP N. BHATT,J)

BEENA SHAH