Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 863 OF 2025

Pr Commissioner of Income
Tax Central Pune …Appellant

Versus

Gujarat Realtors AY 2012 13
ITA 3524 MUM 2023 …Respondent

Mr. Ashok Kotangale, *with Mr. Suresh Kabra & Mr. Nikitesh Kotangae, for the Appellant.*

Mr. Sukhsagar Syal, *for the Respondent.*

CORAM **M.S. Sonak &**
Advait M. Sethna, JJ.
DATED: **20 November 2025**

PC:-

1. Hard Mr. Kotangale for the Appellant and Mr. Syal for the Respondent.

2. This Appeal relates to the assessment year 2012-13.

3. Mr. Kotangale submits that though the tax effect in this case is less than Rs. 2 Crores, the Appeal would fall within the exceptions carved out in the Central Board of Direct Taxes Circular No. 5 of 2024 dated 15 March 2024.

4. Without going into the issue as to whether the Appeal indeed falls within the exceptions, we have heard the learned Counsel for the parties on merits.

5. Mr. Kotangale submits that this is a case where the Respondent assesse filed a return of Rs. 2,38,61,360/-. The assessee's case was selected for scrutiny, and the assessee was issued a notice under Section 148 for reopening of the assessment. He submitted that upon such reopening, the assessee's total income was determined that Rs. 4,28,61,360/- by making an addition of 1.90 Crores. He submitted this addition, has been unjustifiably interfered with by the Income Tax Appellate Tribunal.

6. Mr Kotangale, therefore, submits that this Appeal may be admitted on the questions of law formulated in paragraph 4 of the Appeal memo, which, according to him, are substantial questions of law.

7. Mr. Syal the learned Counsel for the assessee submits that this was a case of reopening of the assessment beyond the prescribed period of four years. Therefore, to sustain such reopening, the Revenue was obliged to make out the case that there was failure on the assessee's part in disclosing all the material facts truly and fully. He submits that this jurisdictional parameter was never complied with and therefore, the entire proceedings for reopening of the assessment were *ex-faci*e without jurisdiction. He submits that the Tribunal has held so by relying upon several decisions of the Hon'ble Supreme Court and this Court. Therefore, the questions now proposed in the memo of appeal do not arise and, in any event, cannot be styled as substantial questions of law.

8. We have considered the rival contentions and perused the record. We, too, are satisfied that this Appeal involves no substantial questions of law. Admittedly, this is a case of reopening of assessment beyond the prescribed period of four years end of the relevant assessment year. To sustain such reopening, it is incumbent upon the Revenue to allege and establish that there was a failure on the part of the assessee to disclose all the material facts truly and fully. The Revenue has failed to do this.

9. In paragraphs 7, 8 and 8.1 of the Tribunal's order, the Tribunal, after transcribing the reasons recorded for reopening of the assessment beyond four years, has correctly concluded that there was not even any allegation about the assessee's failure to disclose all the material facts truly and fully.

10. In the above circumstances, one of the essential jurisdictional parameters for reopening the assessment beyond four years was not fulfilled. The Tribunal, accordingly, was justified in holding that the reassessment proceedings were incompetent in the present case.

11. If the reopening or the reassessment proceedings were incompetent, there is no occasion to address the questions referred to in paragraph 4 of the Appeal memo. Such questions do not arise and, in any event, cannot be regarded as substantial.

12. Accordingly, we dismiss this Appeal. No costs.

(Advait M. Sethna, J) **(M.S. Sonak, J)**