

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19393 of 2018

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HEMJAY CONSTRUCTION CO. PVT. LTD THROU DEENABEN
YOGESHBHAI SHAH
Versus
INCOME TAX OFFICER, WARD 2(2)



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Appearance:

MR DARSHAN B GANDHI(9771) for the PETITIONER(s) No. 1
MR SP MAJMUDAR(3456) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1

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Date : 13/12/2018
ORAL ORDER
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Mr. Darshan Gandhi, learned advocate for the petitioner invited the attention of the court to the reasons recorded for reopening the assessment, to submit that the Assessing Officer seeks to reopen the assessment on the ground that the information received from the DDIT (Inv), Jamnagar reveals that the petitioner has taken unsecured loan aggregating to Rs.25,00,000/- during the year under consideration from M/s. Spectrum Stock Services Private Limited. It was pointed out that during the course of scrutiny assessment, the Assessing Officer had called for information in this regard pursuant to which, the petitioner had furnished confirmation of accounts and had also produced statements of accounts. It was submitted that subsequently, the Assessing Officer had also received confirmation from the said company. It was submitted that, therefore, the Assessing Officer having gone into the

issue at the time of scrutiny assessment, it is evident that the assessment is now sought to be reopened on a mere change of opinion, and hence, the assumption of jurisdiction on the part of the Assessing Officer under section 147 of the Income Tax Act, 1961 is without authority of law.



2. It was further submitted that the impugned notice is dated 29.3.2018 whereby the Assessing Officer seeks to reopen the assessment for assessment year 2012-13, which is clearly beyond a period of four years from the end of the relevant assessment year, and hence, the first proviso to section 147 of the Act would be attracted. It was submitted that all the material necessary for assessment had been duly produced before the Assessing Officer during the course of scrutiny assessment, and hence, there is no failure on the part

of the petitioner to disclose fully and truly all material facts necessary for assessment and, therefore also, the reopening of assessment is bad in law.

3. Having regard to the submissions advanced by the learned advocate for the petitioner, **Issue Notice** returnable on 5th February, 2019. By way of ad-interim relief, the respondent is permitted to proceed further pursuant to the impugned notice; he, however, shall not pass the final order without the permission of this court. Direct service is permitted.

(HARSHA DEVANI, J)

**(A. P.
THAKER, J)**

Z.G. SHAIKH