Reserved On : 25/08/2026
Pronounced On : 03/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.13575 of 2023

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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SLIMTILE PRIVATE LIMITED
Versus
ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

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Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
KARAN G SANGHANI(7945) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. At the outset, learned advocate Mr.Soparker appearing for the petitioner-Company has submitted that the petitioner-Company is not pressing the prayer seeking quashing and setting aside of the show cause notices dated 17.06.2023 and 20.06.2023, issued by respondent No.1-Assistant Commissioner of Income Tax, Central Circle-2, but is confining the challenge to reference dated 24.06.2023 made by respondent No.1 and respondent No.2-District Valuation

Officer for determination of the value of the fixed assets of the petitioner-Company.

BRIEF FACTS OF THE CASE :

2. The petitioner-Company is a Limited Company, for the Assessment Year (A.Y.) 2021-22, filed its return of income on 14.03.2022, declaring a total income of Rs.8,17,74,420/-. The return was selected for scrutiny, pursuant to which a notice under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") came to be issued to the petitioner-Company on 29.06.2022. Thereafter, from time to time, various notices under Section 142(1) of the Act were issued to the petitioner-Company, to which the petitioner-Company duly responded by filing the requisite replies and furnishing the information and documents sought by respondent No.1.

3. Subsequently, on 17.06.2023 and 20.06.2023, respondent No.1 issued the show cause notices to the petitioner-Company. The petitioner-Company submitted its detailed reply thereto on 22.06.2023, wherein, apart from dealing with the allegations and issues raised in the show cause notices on merits, the petitioner-Company specifically questioned the very maintainability

and validity of the notices and the proceedings initiated pursuant thereto, *inter alia*, on the ground that the proceedings were barred by limitation.

4. In response to the aforesaid objection regarding limitation, respondent No.1, by an e-mail dated 21.06.2023 addressed to the petitioner-Company, which communication, significantly, is not reflected on the Income Tax Business Application (ITBA) portal, sought to contend that the time available for completion of the assessment stood extended by virtue of the Explanation to Section 153 of the Act. Thereafter, on 24.06.2023, respondent No.1 made a reference to respondent No.2-District Valuation Officer under Section 142A of the Act, seeking determination of the value of the fixed assets allegedly acquired by the petitioner-Company, on the premise that the said assets had been acquired in the names of individual owners and were allegedly not being used for the purposes of the business of the petitioner-Company.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER-COMPANY</u> :

5. Learned advocate Mr.Soparker appearing for the petitioner-Company has submitted that the reference dated 24.06.2023 made by respondent

No.1 to respondent No.2 for determination of the value of the fixed assets constitutes is nothing but a colourable exercise of power, having been resorted to with the object and effect of artificially extending the period available for completion of the assessment.

6. It is submitted that, significantly, in the very reference made under Section 142A of the Act, respondent No.1 sought the opinion of respondent No.2 for determining the Fair Market Value of the tangible assets as on 24.06.2023, while acknowledging that the assessment proceedings would become time-barred on 25.06.2023. It was, therefore, contended that the reference could not have been made as a legitimate step in the assessment proceedings, but was consciously resorted to at the fag end of the prescribed period, with the sole object of invoking the statutory consequence of such reference and thereby seeking to extend the period available for completion of the assessment. On such premise, the reference itself was assailed as being a colourable and impermissible exercise of power and, consequently, as being without jurisdiction and liable to be quashed and set aside.

7. Learned advocate Mr.Soparker has further submitted that the very basis on which the reference came to be made to the respondent No.2 is wholly misconceived and legally unsustainable. According to respondent No.1, the petitioner-Company had acquired the fixed assets in the names of individual owners, while claiming depreciation in respect thereof in its books of account. It was submitted that, even assuming the aforesaid premise of respondent No.1 to be correct, the same could at the highest furnish a ground for examining the claim for depreciation of the petitioner-Company and, if found impermissible, for disallowing such claim in accordance with law. There was, however, no justification whatsoever for obtaining a valuation of the fixed assets from respondent No.2, since the valuation of such assets had no bearing upon the alleged defect in the claim for depreciation of the petitioner-Company.

8. It was, therefore, submitted by learned advocate Mr. Mr.Soparkar that the reference to respondent No.2 for determination of the value of the fixed assets was wholly extraneous to the issue sought to be examined by respondent No.1

and could serve no legitimate purpose in the assessment proceedings. The timing and manner in which the reference was made, particularly on 24.06.2023, immediately before the assessment was to become time-barred on 25.06.2023, clearly demonstrated that the reference was not made for any genuine or *bona fide* valuation requirement, but was merely employed as a device to invoke the statutory extension of time and thereby keep the assessment proceedings alive. The reference, therefore, being a colourable and impermissible exercise of power, was submitted to be without jurisdiction, illegal and liable to be quashed and set aside.

9. In support of his submissions he has placed reliance on the judgment of this Court in case of *Anand Banwarilal Adhukia Vs. Deputy Commissioner of Income-Tax, Circle-14*, (2016) 75 Taxmann.com 301 (Gujarat) and in case of *Me & Mummy Hospital Vs. Assistant Commissioner of Income-Tax*, (2014) 45 Taxmann.com 248 (Gujarat).

SUBMISSIONS ADVANCED BY THE REVENUE

10. Opposing the aforesaid submissions, learned Senior Standing Counsel Mr.Karan G. Sanghani at the outset has submitted that as far as the

impugned reference order dated 24.06.2023 referring the valuation relating to the depreciation on assets is concerned, he would be unable to justify the same since it is always open for the Revenue/ Assessing Officer to disallow the claim of depreciation, and there is no requirement of referring it for valuation. However, with regard to the reference to the Valuation Officer relating to the unaccounted cash to the group company of M/s.Ratnakala Exports Pvt. Ltd., relating to share purchase and other immovable properties and increase in fixed asset is concerned the Assessing Officer is justified in referring the same to the Valuation Officer.

11. In so far as the period consumed from 28.12.2022 to 17.06.2023, consumed by the Assessing Officer, learned Senior Standing Counsel Mr.Sanghani has attempted to justify the same. It is contended that the Assessing Officer during this period has scrutinized the seized material and correlated with the audited reports of the petitioner-Company and return disclosures which consumed time, and thereafter, the Assessing Officer issued show cause notices dated 17.06.2023 and 20.06.2023.

12. It is submitted by the learned Senior Standing Counsel that in the matter arising out of search and incriminating material indicating cash transactions, two factors are required to be accepted to make the assessment legally robust namely, (1) generation/ availability of cash and (2) utilization of such cash. In the instant case, the seized material indicated cash transactions thereby raising an assessment relevant requirement to examine the issue as to whether to what extent such cash stood deployed/invested in tangible assets. It is submitted that the financial statements for the year ended on 31.03.2021 disclose significant additions to tangible assets and further incriminating material received from the investigation wing on 28.12.2022 revealed unaccounted cash transactions within the group concerns.

13. It is contended that the determination of true and fair market value of assets *vis-a-vis* the declared investment was necessitated and hence such exercise squarely falls within the scope of Section 142A of the Act which empowers the Assessing Officer to obtain expert valuation

to ascertain the correctness of investment or value of assets in question.

14. It is submitted that thus the proceedings were subsisting as on 24.06.2023 and the reference has been made before expiry of limitation in accordance with Explanation-1(v) to Section 153(1) of the Act which contemplates exclusion of time for obtaining valuation report and hence the timing of the reference was within jurisdiction and in consonance with the statutory framework thus it is urged that the writ petition may not be entertained.

ANALYSIS AND OPINION

15. We have heard the learned advocates appearing for the respective parties at length and perused the documentary evidence on record. The facts, which are established from the pleadings and the documentary evidence on record are as under.

(a) A search and seizure under Section 132 was undertaken on 24.09.2021 at M/s.Ratnakala Exports Pvt. Ltd., after the survey on 22.09.2021. Thereafter, a show cause notice for transfer of the case under Section 127 of the Act was issued on 16.11.2021 to the petitioner-Company, which objected the transfer of the case and ultimately, the case was transferred to the jurisdiction of the petitioner-Company from Rajkot to Surat with immediate effect. Ultimately, the petitioner-Company filed its return of income for A.Y. 2021-22 declaring total income of Rs.8,17,74,420/- on 14.03.2022.

(b) The case of the petitioner-Company was selected for scrutiny and a notice under Section 143(2) of the Act was issued to the petitioner on 29.06.2022.

(c) The petitioner-Company filed its response to the notices issued thereafter, on 12.08.2022, 21.11.2022 and 02.12.2022.

(d) On 28.12.2022, the material derived from search and survey of M/s.Ratnakala Exports Pvt. Ltd., by Deputy Director of Income Tax (DDIT) (Investigation), Surat was forwarded and handed over to Deputy Commissioner of Income Tax (DCIT), Surat. Thereafter, on 17.06.2023 and 20.06.2023 show cause notice was issued by the respondent – Assistant Commissioner of Income-tax, Central, Circle-2 on the basis of the material gathered during the search for unaccounted payment of Rs.1,01,00,113/- and Rs.19,75,00,000/-.

(e) The petitioner-Company objected to the show cause notice vide communication dated 22.06.2023 pointing out that assessment has become time barred and also contesting on merits.

(f) The petitioner-Company also objected to the show cause notice, which is sent via email, is not reflected on the portal.

(g) On 21.062023, the petitioner-Company was informed that the requisite show cause notice has already been served to the the petitioner-Company through email on 20.06.2023 relevant to A.Y. 2018-19 and A.Y. 2021-22 and the assessment will be completed based on the details available on record and merit of the case in case the petitioner fails to respond. It was also intimated that the extension of time was in compliance of the provision of Section 153 of the Act read with its Explanation and the period of exclusion of handling over seized incrementing materials.

(h) Thereafter, by the impugned order dated 24.06.2023, the Assessing Officer referred the matter to Departmental Valuation Officer.

16. We may, at this stage, clarify that while passing the impugned order dated 24.06.2023, the Assessing Officer has specifically recorded that the assessment proceedings are pending in this case and it is getting time barred on 25.06.2023. Thus, one day prior to the expiry of the limitation of the assessment proceedings for A.Y. 2021-22, the Assessing Officer refers the valuation for determining the valuation of fair market value of tangible assets to the District Valuation Officer. Further the Assessing Officer has requested the District Valuation Officer to send the report earliest and preferably by 30.06.2023.

17. The adjustment of limitation period, under which the revenue has taken shelter is found in the provision of Section 153 (Explanation-1)(v) of the Act. Section 153 (Explanation 1)(v) of the Act reads as under :-

> *"No order of assessment shall be made under Section 143 or Section 144 at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable.*
>
> *Explanation 1:*
> *For the purposes of this Section, in computing the period of limitation,*

> *(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under Sub-Section (1) of Section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer."*

18. It is the case of the petitioner-Company that the Assessing Officer in order to buy further time and extend the time beyond 31.12.2022 to 25.06.2023 by resorting to the provision of Section 153 (Explanation-1)(v) of the Act has passed the impugned order of reference.

19. We agree with the submissions advanced by learned advocate Mr.Soparkar on the scrutiny of the established facts.

20. The Assessing Officer has passed the impugned order requesting the District Valuation Officer to determine the fair market value on following two grounds;

(1) that the search action resulted in various seized incrementing material which exhibited that the the petitioner-Company has paid huge unaccounted cash in crores to the group company of M/s.Ratnakala Exports Pvt. Ltd., regarding share purchase and other movable properties during the year under consideration and the the petitioner-Company

has shown the increase in fixed asset which includes land and building, plant and machinery, vehicles, computer etc. totaling to Rs.64,00,02,502/- and;

(2) that during the assessment proceedings it has been noticed that the the petitioner-Company has purchased the above mentioned fixed assets in the name of individual owners. However, the depreciations are claimed on the same in the books of accounts of the the petitioner and thus, it is alleged that the petitioner-Company has claimed bogus depreciation on assets which are not purchased in its name and neither being used for its business purpose.

21. As far as the second reason mentioned in the impugned order of reference is concerned, it has been fairly accepted by learned Senior Standing Counsel appearing for the revenue that the reference could not have been made on such issue as it is always open for the Assessing Officer to disallow the depreciation, if it is found to be bogus.

22. In our considered opinion, the Assessing Officer has acted illegally in order to further

strengthen his first ground for reference relating to the valuation of assets and attempted to create another ground of claim of bogus depreciation on such assets for extending the limitation, which was getting time barred on 25.06.2023. It cannot be countenanced that the Assessing Officer was ignorant of the provision of the Chapter IV of the Act, which regulates depreciation, investments etc, while making the reference on depreciation of assets by alleging bogus claim, which he could have disallowed.

23. We may now deal with the first reason assigned in the reference order. The same also appears to be intentional, and is raised in order to extend the limitation period of completing the assessment.

24. We may mention that, as per the case of the Revenue the material derived from search and survey action from M/s.Ratnakala group was handed over to the DCIT, Surat on 28.12.2022. For the period of six months the Assessing Officer sat tight on such material and thereafter on 17.06.2023 and 20.06.2023, show cause notices were issued by the respondent of Rs.1,01,00,113/- and Rs.90,75,00,000/- for unaccounted payment. A

perusal of the both the show cause notices reveal that the petitioner-Company has been called upon to explain as to why the amount mentioned, hereinabove above, should not be treated as its unaccounted payment, however, the notices are silent so far as the valuation of assets are concerned. The petitioner-Company in its reply dated 20.06.2023 had tendered explanation to the unaccounted payment given by it. As previously mentioned, the petitioner-Company was issued the show cause notices on 05.08.2022, 16.11.2022 and 21.11.2022 under Section 142(1) of the Act. None of these notices refer to search or survey proceedings. By these notices, the petitioner-Company was called upon to supply numerous details of bank accounts, claim of deductions, cash deposits, profit and loss, repayment of unsecured loans, details of loans and advances and investment. In the final notice dated 21.11.2022, the petitioner-Company was asked to furnish the details of assets during the year in consideration, expenses of repair and maintenance of plant and machinery of Rs.4,07,66,736/- along with copy of ledger account, and supporting evidence. The petitioner-Company, in its reply dated 02.12.2022, had explained in detail by supplying the necessary material explaining the payments made on the assets such as computer, machinery, factory shed, vehicle, furniture, office equipment etc. The petitioner-Company had given the details of the payments made through Bank. After such explanation was tendered by the petitioner-Company relating to the assets on 02.12.2022, the things did not proceed further till the issue with regard to the valuation of the assets was cropped-up on 24.06.2023 in the impugned order of reference, by which the Assessing Officer referred the valuation of assets to the Departmental Valuation Officer. The show cause notices dated 17.06.2023 and 20.06.2023 are also silent on the aspect of assets. Hence, it is to be presumed that after the petitioner-Company tendered its detail reply dated 02.12.2022 to the show cause notice issued on 21.11.2022 under the provisions of Section 142(1) of the Act, the Assessing Officer did not choose to reopen or question the payment on assets by the petitioner-Company.

25. Thus, on a close scrutiny of the facts and the documentary evidence on record, we find that the Assessing Officer in order to save the assessment proceedings by giving a colorable

exercise extended the limitation of the assessment proceedings which was going to be over on 25.06.2023 by passing the impugned order of reference. The Assessing Officer, from the beginning, was very much alive to the limitation period for the assessment proceedings, which would get expired on 25.06.2023, as he himself has referred to in the impugned order. All the material from the search and survey and from the petitioner was already available with the Assessing Officer, however, he showed remissness in completing the assessment before 25.06.2023. Thus, by creating an artificial cause of action of referring determination of valuation of assets and the claim of depreciation on such assets has attempted to extend the time by resorting to Explanation-1(v) to Section 153 of the Act.

26. In addition to the aforesaid aspects, we also find that no satisfactory explanation has been tendered by the Revenue to explain the delay from 28.12.2022 i.e. the date when the material was handed over from the search proceedings to the DCIT, Surat till the issuance of the notice on 17.06.2023. A lame explanation has been tendered to the extent that the Assessing Officer consumed

the time in examining such material. In case, the Assessing Officer had scrutinized all the material within time limit then while issuing notices on 17.06.2023 and 20.06.2023, he could have re-examined the explanation tendered by the petitioner-Company to the payments made on the assets vide his reply dated 02.12.2022 and also the claim of depreciation, and there would have been no further need to resurrect the issue, while passing impugned order dated 24.06.2023 referring the determination of valuation on assets which he missed in the subsequent notices issued on 17.06.2023 and 20.06.2023.

27. Thus, the overall analysis and the appreciation of facts manifest that the Assessing Officer has very ingeniously raised two issues for making reference to the District Valuation Officer in order to cover-up his inaction in completing the assessment proceedings before 25.06.2023.

28. Hence, the writ petition succeeds. The impugned order dated 24.06.2023, whereby the Assessing Officer referred the matter to the Departmental Valuation Officer a mere day prior

to the assessment proceedings becoming time-barred, is hereby quashed.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(VAIBHAVI D. NANAVATI,J)

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Bhavesh-[PPS]/K.K.SAIYED/1