

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 627 of 2009

For Approval and Signature:

**HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
Whether this case involves a substantial question of law as to the
- 4 interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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SHRI SIRMAD BUDDHISAGAR SURI JAIN SAMADHI MANDIR - Petitioner

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, PATAN CIRCLE - Respondent

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Appearance :

MR MANISH J SHAH for Petitioner :
NOTICE SERVED BY DS for Respondent :
MRS MAUNA M BHATT for Respondent :

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

Date : 09/02/2009

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition is taken up for final hearing and disposal today, considering the scope of the controversy and in light of the view that the Court is inclined to adopt. Rule. The learned counsel for the respondent department is directed to waive service.
2. The petitioner, a Public Charitable & Religious Trust, has challenged the notice issued under Section 148 of the Income Tax Act 1961 (The Act) for Assessment Year 2005-2006, issued on 15/2/2008, and consequently Assessment Order made under Section 143 (3) read with Section 148 of the Act on 30/12/2008. It is an admitted fact that the impugned notice dated 15/2/2008 (Exhibit-I) was issued by Income Tax Officer, Patan Ward-III, Mehsana, whereas the Assessment Order has been framed by Assistant Commissioner of Income Tax, Patan Circle, Patan, the respondent herein. Though learned senior counsel appearing on behalf of respondent authority has tendered affidavit-in-reply dated 4/2/2009, the averments made on behalf of the petitioner that the Income Tax Officer had no jurisdiction to issue notice under Section 148 of the Act has not been controverted in the said affidavit. It is true that in the Assessment Order respondent authority has sought to deal with this objection by taking recourse to provisions of section 292B of the Act. However, as the said aspect, namely notice under Section 148 of the Act having been issued by an officer who did not have jurisdiction, is not contested, the petition is required to be allowed on this limited count.
3. Before parting, it is necessary to take note of the fact that, despite the law laid down by the Apex Court, and reiterated, and followed by this Court in number of matters, the present petitioner was constrained to approach this Court in an earlier round of proceeding by way of Special Civil Application No. 13955 of 2008, seeking direction qua

the respondent authority to supply reasons recorded before proceeding ahead with the proposed assessment. The said reasons recorded by the authority were supplied only after a notice came to be issued by this Court. The approach of the respondent authority, in the circumstances, cannot be condoned, and the attempt to frame an Assessment on the basis of a notice issued without jurisdiction does not commend to the Court. However, without entering into any other discussion in the matter, it would be just & fair if the respondent authority is called upon to bear the costs of this petition, in the circumstances.

4. In the circumstances, the impugned notice dated 15/2/2008 (Exhibit-I) is quashed and set aside, as having been issued by an authority who did not have jurisdiction to issue the notice, and as a consequence, the Assessment Order framed on 30/12/2008 for Assessment Year 2005-2006 is also quashed and set aside. The petition is accordingly allowed in the aforesaid terms. Rule made absolute. Respondent authority shall pay costs quantified at a sum of Rs.500=00 (Rupees Five Hundred only).

[D.A. MEHTA, J]

/vgn [S.R. BRAHMBHATT, J]