IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 449 of 2025

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THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD

Versus

NK PROTEINS PVT. LTD.

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Appearance:
MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1
MR DHINAL A SHAH(12077) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 04/08/2026
ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr. Varun Patel for the appellant and learned advocate Mr. Dhinal Shah for the respondent.

2. This Appeal is filed under section 260A of the Income Tax Act, 1961 [for short 'the Act'] arising out of order dated 12.11.2024 passed by the Income Tax Appellate Tribunal in ITA No. 339/Ahd/2022

for A.Y. 2009-10 proposing following substantial questions of law:

(a) Whether in the facts and circumstances of the case and in law, the learned ITAT has erred in coming to the conclusion that the Assessing Officer cannot make additions on issues which did not form part of the reasons recorded by him, when no addition is made by him on the issues which are included the reasons recorded?

(b) Whether in the facts and circumstances of the case and in law, the learned ITAT has erred in holding that the Explanation 3 to Section 147 which has been inserted by Finance (No.2) Act, 2009 retrospectively with effect from 01.04.1989 i.e. "For the purpose of assessment or reassessment under this section, the Assessing Officer may assess

or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148" cannot expand the scope and sweep of the main body of Statutory provision?

(c) Whether in the facts and circumstances of the case and in law, the learned ITAT has erred in upholding the decision of the CIT(A) in deleting the disallowance of Rs. 13,89,08,810/ made u/s. 43(5) r.w.s 73 and 40A(2)(b) of the Income tax Act, 1961?

3. Brief facts of the case are that the assessee-company is engaged in manufacturing of edible, non-edible oil products and byproducts thereof.

3.1 The assessee filed return of income and assessment order under section 143(3) of the Act was passed on 29.12.2011 assessing total income at Rs. 22,55,48,605/-.

3.2 Thereafter, a notice under section 148 was issued on 09.03.2015 for the following two reasons:

[a] disallowance u/s. 14A r.w.r. 8D was wrongly worked out at Rs.1,13,521/- instead of Rs.2,18,174/- and

[b] the amount received from National Stock Exchange Ltd [NSEL] amounting

to Rs.244.98 crores is in the nature of income brought in the account of debtors in the guise of so-called paper trade and which needs to be taxed in the hands of the assessee company.

3.3 The Assessing Officer completed reassessment by making disallowance under section 43(5) read with section 73 and section 40A(2)(b) of Rs. 13,89,08,810/- and excess disallowance of Rs. 1,04,652/- under section 14A of the Act.

3.4 The Assessee preferred an appeal before the CIT(Appeals) and raised additional ground of reopening of the assessment as the Assessing Officer did not make any addition for the reasons recorded for reopening.

3.5 The CIT(Appeals), after considering the additional ground first challenging the reopening of the assessment held that the reassessment proceedings is bad in law by observing as under:

> "4.8 So far as merits of additional claim are concerned, it is observed that AO had issued reassessment notice on two grounds. The main ground for reassessment notice was with reference to transactions with NSEL for Rs.244.98 crores. The Appellant has claimed that no transaction with NSEL was carried out in current year, which is also accepted by the Special Auditor in his report under Section 142A of the Act. The figure of Rs.244.98 crores was nothing but addition made in Appellant's own case for A.Y.2011-12

in Assessment Order passed on 21/11/2014. This contention of Appellant was accepted by AO while passing the Assessment Order and no addition was made. So far as second issue being disallowance under Section 14A for Rs.2,18,174/- is concerned, it is observed that addition under Section 14A for Rs.1,13,521/- was also made in original Assessment Order dated 29/12/2011. While computing disallowance under Section 14A read with Rule BD, AO had considered gross average asset as denominator whereas in the reasons recorded for present case, AO was of the view that net average asset needs to be taken. It is pertinent to note that entire issue of disallowance under Section 14A as was raised in original Assessment Order was deleted by Hon'ble Ahmedabad ITAT in Appellate Order dated 27/07/2016. The relevant operative part of the

said decision is reproduced hereunder.-

> "29. We have heard the rival contentions and perused the material on record. Assessee is aggrieved with the disallowance u/s 14A of the Act of Rs. 1,13,521/-confirmed by Id. CIT(A). We further observe that Id. AR specifically mentioned that there is no exempt income earned by the assessee during the year. We also observe that in the judgment of Hon. Jurisdictional High Court in the case of CIT vs. Cortech Energy P. Ltd. (supra) has confirmed the order of the Tribunal deleting disallowance u/s 14A of the Act as the assessee has not claimed any exempt income. Similar is the situation in the case of assessee and we respectfully following the judgment of Hon. Jurisdictional High Court are of the view that no disallowance is called for u/s 14A as assessee has not claimed any exempt income in the year under appeal. We hold that Id. CIT(A) was not correct in upholding the disallowance and allow the ground of assessee."

Considering the above referred decision in Appellant's own case for current year only, ground of reassessment for alleged escapement for disallowance under Section 14A does not survive or addition made in reassessment order consequently does survive. Thus, the effective addition in Appellant's case based upon reassessment order is disallowance under Section 43(5) read with Section 73 for Rs.13,18,08,810/- which is not based upon reasons recorded. Thus, additions effectively made in Assessment Order are not based upon reasons recorded and the legal pleas taken by Appellant are discussed elaborately by various courts and the courts have taken a view that when on the ground on which reassessment was based, addition is not made by AO in reassessment order, he cannot make additions on other grounds which do not form part of reasons recorded by him.

4.9 In view of above discussions and factual matrix of the case and respectfully following the decisions of Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. Mohmed Junded Dadani [2013] 30 taxmann.com 1(Gujarat)/[2013] 214 taxman 38 (Gujarat)/355 ITR 172

(Guj), Hon'ble Jurisdictional Tribunal in Appellant's own case and other decisions as mentioned above and also as relied upon by the Appellant on similar issue to the Appellant's case, I find that claim of Appellant is correct.

4.10 In addition to above and on perusal of reasons recorded by AO, which is reproduced herein above, it is apparent that major issue for alleged escapement of income relates to payment from NSEL for Rs.244.98 crores. In the present year, the Appellant has not carried out any transactions with NSEL and even figure of alleged escapement of income pertains to addition made by AO for A.Y.2011-12. This issue is elaborately discussed in preceding paras which makes it clear that reasons recorded by AO are based upon factually incorrect details or same are non-existing."

3.6 The CIT(Appeals) relied upon the following decisions:

1. **Amar Jewellers Ltd vs. Deputy Commissioner of Income Tax** reported in [2018] 92 taxmann.com 4;

2. **Narendrakumar Mansukhbhai Patel vs. Income Tax Officer Ward 1(2)(3)** reported in [2018] 92 taxmann.com 259;

3. **Mahadev Trading Co. vs. Income Tax Officer,Ward-5(4)** reported in 18 taxmann.com 353;

4. **Sunbarg Tradelink (p.) Ltd vs. Income Tax Officer** reported in [2016] 74 taxmann.com 16;

5. **Ambience Business Services Pvt. Ltd vs. DCIT** in Writ Petition NO. 2608 of 2019 dated 28.11.2019;

6. **Shamshad Khan vs. Assistant Commissioner of Income Tax** dated 11.04.2017 82 taxmann.com 35;

7. **M/s. Gujarat Eco Textile Park Ltd vs. ACIT** in SCA No. 4017 of 2016 dated 05.07.2016;

8. **Mitul Gems vs. ACIT** reported in [2015] 62 taxmann.com 66 (Guj.);

9. **Oriental Insurance Co. vs. CIT** reported in [2015] 63 taxmann.com 171 [Delhi];

10. **Asharam Ashram vs Income Tax Officer (Exemption) Ward No.1** in SCA No. 4774 of 2016 dated 20.07.2016.

Considering the above decisions, the reassessment notice on the ground of alleged escapement of income for the transactions made with NSEL was held to be not justified by CIT(Appeals).

3.7 With regard to the second issue of alleged escapement relating to computation of disallowance under Section 14A of the Act is concerned, the CIT (Appeals) held as under:

> "4.11 So far as second issue of alleged escapement relating to computation of disallowance under Section 14A is concerned, it is observed that original assessment under Section 143(3) of the Act was

already passed on 29/12/2011 wherein after detailed discussion AO has made disallowance under Section 14A at Rs.1,13,521/-. The discussion was made at para 8 of the order. The reassessment notice is issued only for re-computation of disallowance under Section 14A made in Assessment Order. It is an undisputed fact that the reassessment notice was issued on 9th March, 2015 which means that such notice is issued beyond four years from end of relevant Assessment Year. On perusal of reasons recorded, it is seen that AO has not mentioned whether there was failure on part of assessee to disclose truly and fully all material facts necessary for making assessment as required by Provisions of Section 147. No new material/tangible material has been brought on record by AO which justify such reassessment notice and on the contrary, re-computation is made based upon facts already on the record of AO. Thus, issuance of notice for alleged escapement of income by making re-computation of disallowance u/s 14A on same issue is certainly change of opinion on part of subsequent AO. Further, it is important to note that before passing of the Assessment Order, Hon'ble Ahmedabad ITAT had already deleted disallowance under Section

14A made in original Assessment Order."

3.8 The CIT(Appeals) relied upon the decision of this Court in the case of **Sandesh Procon LLP** in **ITAT vs Assistant Commissioner of Income Tax, Circle 3(3), Ahmedabad** in Special Civil Application No. 19990 of 2019, dated 5th February 2021, on similar facts. In addition to above, reliance was placed on the following decisions:

(i) **Adani Enterprises Ltd. vs.Assistant Commissioner of Income Tax (ACIT) / Deputy Commissioner of Income Tax (DCIT)** reported in 101 taxmann.com 91;

(ii) **DCIT vs. Bajaj Allianz Life Insurance Company Ltd.** Reported in [2021] 125 taxmann.com 71;

(iii) **M/s. Tech Span India Private Ltd** reported in [2018] 92 taxmann.com 361;

(iv)**E-Inforchips Ltd vs. Assistant Commissioner of Income Tax, Circle 2(1)(1)** reported in [2018] 99 taxmann.com 84;

(v) **Sun pharmaceutical Industries Ltd vs. DCIT** reported in [2020] 272 taxmann.com 407.

Considering the above decisions, CIT(Appeals) held that reassessment notice relating to alleged escapement of income relating to disallowance under Section 14A is mere change of opinion on part of the subsequent Assessing Officer and reassessment notice issued by AO is nothing but an invalid notice. Therefore, CIT(Appeals) allowed additional ground of appeal filed by Appellant and quashed reassessment order.

3.9 Being aggrieved by the order of the CIT (Appeals), the Revenue preferred an appeal before the Tribunal, and the assessee preferred cross-objections challenging the directions of the

Assessing Officer to conduct a special audit under Section 142(2A) of the Act, as well as on merits.

3.10 The Tribunal, after considering the submissions made by both sides as well as the order passed by the CIT (Appeals), dismissed the appeal of the Revenue, upholding the order passed by the CIT (Appeals) quashing the reassessment order being without jurisdiction. Consequently, the addition made under Section 43(5) read with Sections 73 and 40A(2)(b) of the Act of Rs. 13,89,08,810/- was also quashed and set aside. As a consequence, the cross-objections filed by the assessee supporting the order of the CIT (Appeals) were allowed.

4. Learned Senior Standing Counsel Mr. Varun Patel submitted that the Tribunal has committed an error in upholding the order of the CIT (Appeals) without considering the fact that once an assessment is reopened, it would be open for the Assessing Officer to examine the other issues which arise during the course of reassessment proceedings.

4.1 It was further submitted that the Assessing Officer was justified in making addition on disallowance under Section 43(5) read with Section 73, as well as under Section 14A of the Act.

4.2 It was submitted that the disallowance under Section 14A of the Act was wrongly worked out, whereas, the amount received from NSEL was in the

nature of income brought into the account of the debtors in the guise of so-called paper trade, which was rightly taxed in the hands of the assessee-company.

5. On the other hand, learned Advocate Mr. Dhinal Shah submitted that the CIT(Appeals) and the Tribunal have rightly referred to and relied upon the decision of this Court in the case of **CIT v. Mohmed Juned Dadani**, reported in (2013) 30 taxmann.com (1).

5.1 It was further submitted that no addition can be made on account of Section 43(5) of the Act, as the assessee claimed that no transaction was carried out through the NSEL for the year under consideration, which was also accepted by

the special auditor in the report under Section 142A of the Act, whereas, the figure of Rs. 244.98 crores was nothing but an addition made in the assessee's own case for Assessment Year 2011-12 in the regular assessment order passed on 21.11.2014, and the Tribunal deleted such addition by an order dated 16.11.2022.

5.2 It was, therefore, submitted that the income escaped, as mentioned in the reasons recorded by the Assessing Officer, does not relate to the Assessment Year 2009-10. Hence, both the CIT (Appeals) and the Tribunal have rightly held that the reassessment proceedings are liable to be quashed.

5.3 Learned advocate Mr. Dhinal Shah, in support of his submissions, relied upon the following decisions:

1. **Commissioner of Income Tax-II vs. Mohmed Juned Dadani** reported in [2014] 355 ITR 172 (Guj.);

2. **Commissioner of Income Tax-5, Mumbai vs. Jet Airways (I) Ltd** reported in [2011] 331 ITR 236 (Bom);

3. **Principal Commissioner of Income-tax vs. Sunlight Tour and Travels (P.) Ltd** reported in [2024] 169 taxmann.com 673 (Delhi);

4. **Sipura Developers (P.) Ltd vs. Principal Commissioner of Income Tax** reported in [2024] 168 taxmann.com 543 (Delhi);

5. **Yashoda Shivappa Naganhoudar vs. Income Tax Officer** reported in [2022] 138 taxmann.com 296 (Bombay);

6. Principal Commissioenr of Income Tax vs. Lark Chemicals (P.) Ltd reported in [2018] 99 taxmann.com 312;

7. Principal Commissioner of Income Tax (Centra)-3, New Delhi vs. Jakhotia Plastics (P.) Ltd reported in [2018] 94 taxamann.com 89 (Delhi);

8. Jakhotia Plastics (P.) Ltd vs. Principal Commissioner of Income Tax reported in [2018] 94 taxmann.com 96 (SC).

6. Having heard the learned Advocates for the parties and on perusal of the reasons recorded, and on perusal of the assessment order passed under Section 147 read with Section 143(3) of the Act, it emerges that no addition is made by the Assessing Officer for the reasons recorded for reopening of the assessment and therefore, there was no failure on the part of the assessee for true and full disclosure of the income which can be said to have escaped the assessment.

7. The regular assessment order under Section 143(3) of the Act was passed on

29.12.2011, assessing the total income at Rs. 22,55,48,602/-. Thereafter, the reassessment notice was issued under Section 148 of the Act on 09.03.2015, that is, beyond four years, but within six years, recording the aforesaid two reasons, namely:

> (a) Disallowance under Section 14A read with Rule 8D was wrongly worked out at Rs. 1,13,521/- instead of Rs.2,18,174/- and;
>
> (b) The amount received from NSEL amounting to Rs.244.98 crores is in the nature of income brought into the account of the debtors in the guise of so-called paper trade, which needs to be taxed in the hands of the assessee company.

8. The Assessing Officer, while framing the reassessment order, did not make addition

in respect of any of the two reasons recorded for reopening. Therefore, it cannot be said that there was any failure on the part of the assessee in disclosing such income in the return of income so as to confer jurisdiction upon the Assessing Officer to reopen the assessment beyond four years, in view of the decision of this Court in the case of Mohmed Juned Dadani (supra), wherein it is held as under:

> "... 30. We may also approach the question from a slightly different angle. It is not in dispute that once an assessment is reopened by a valid exercise of jurisdiction under Section 147 of the Act, it is open for the Assessing Officer to assess or reassess any income which had escaped assessment which comes to his light during the course of his assessment proceedings which was not mentioned in the reason for issuing notice under Section 148 of the Act. In a notice for reassessment which has been issued beyond a period of four years from

the end of relevant assessment year, the condition that income chargeable to tax has escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts for the purpose of assessment must also be established unless of course some other ground viz. non-filing of the return at all etc. is available to the Assessing Officer. If such non-disclosure of material facts is established with respect to the reason recorded for issuing notice for reopening the assessment, it would be open for the Assessing Officer to thereafter even assess other income which might have escaped assessment but which may not necessarily satisfy the requirement of non-disclosure of true and full material facts. If in such a situation, the stand of the revenue is accepted, a very incongruent situation would come about if ultimately the Assessing Officer were to drop the ground on which notice for reopening had been issued but to chase some other grounds not so mentioned for issuance of the notice. In such a situation, even if a case where notice for reopening has been issued beyond a period of four years, the assessment would continue even though on all the grounds on which the additions are

being made, there was no failure on the part of the assessee to disclose true and full material facts. In such a situation an important requirement of failure on part of the assessee to disclose truly and fully all material facts would be totally circumvented.

31. As already noted, except for the Punjab and Haryana High Court in case of Majinder Singh Kang (supra) all courts have uniformly taken a view that Explanation 3 to Section 147 of the Act does not change the situation insofar as the present controversy is concerned. Leading decision of Bombay High Court in case of Jet Airways (I) Ltd. (supra) has been followed by different High Courts. In case of Jet Airways (I) Ltd. (supra) the High Court, in its elaborate decision considering the statutory provisions, different judicial pronouncements and the explanatory memorandum for introduction of Explanation 3 to Section 147 of the Act ruled in favour of the assessee."

9. After considering the scheme of the reassessment under Sections 147 and 148 of the Act, the Tribunal has rightly upheld

the order of the CIT (Appeals) by observing as under:

> "7.1. On first reason for reopening being disallowance u/s.14A for Rs.2,18,174/- is concerned, it is observed that addition u/s.14A for Rs.1,13,521/- was made in original Assessment Order dated 29-12-2011. On appeal before this Tribunal vide Appellate Order dated 27-07-2016 in ITA No.1986 & 2133/Ahd/2012, Co-ordinate Bench of this Tribunal deleted the addition on account of disallowance u/s.14A, since the assessee has not received any dividend income during this Asst. year following jurisdictional High Court judgement.
>
> > "8. On second reason for reopening the assessment, the assessee claimed that it had no transaction carried out with NSEL in the present asst year, which is also accepted by the Special Auditor in his report u/s.142A of the Act. Whereas the figure of Rs.244.98 crores was nothing but addition made in Assessee's own case for the Asst. Year 2011-12 in the regular Assessment Order passed on 21-11-2014. On appeal before this Tribunal

vide Appellate Order dated 16-11-2022 in ITA Nos.328 & 329/Ahd/2017 deleted the above addition also. Therefore the income escaped as mentioned in the 'reason recorded' by the Ld AO is not relating to the present Asst. year 2009-10 the same is invalid in the eyes of law and the reassessment is liable to be quashed.

9. Now next question that arise for our consideration is whether the AO can proceed with assessing any other escaped income, when NO addition is made on account of the reasons recorded by the AO for reassessment. This issue is also no more res-integra by judgements of various High Courts more particularly jurisdictional High Court in the case of Mohmed Juned Dadani [cited supra] wherein it was held that when the ground on which reopening of assessment and no addition was made by the Ld AO, he could not make additions on some other grounds which did not form part of reasons recorded by him by observing as follows:

> "... 23. Section 147 of the Act, even without the aid of Explanation 3 thus enabled

the Assessing Officer while framing an assessment under Section 147 of the Act, to assess or reassess such income for which he had recorded his reasons to believe had escaped assessment and also any other income which escaped assessment which came to his notice subsequently in the course of the assessment proceedings.

24. Sans explanation (3), Section 147 of the Act, however, by no stretch of imagination, can be construed as to provide that if the reason on which the assessment is reopened fails, the Assessing Officer still can proceed to assess some other income which according to him had escaped assessment and which came to his light during the course of the assessment. For assuming jurisdiction to frame an assessment under Section 147 of the Act what is essential is a valid reopening of a previously closed assessment. If the very foundation of the reopening is knocked out, any further proceeding in

respect to such assessment naturally would not survive.

25. A question may therefore, arise whether introduction of Explanation (3) would change this position and for that purpose we need to ascertain what is true purport of Explanation 3 and the purpose for which the same was introduced. Let us have a closer look to such Explanation which provides that for the purpose of assessment or reassessment under the said section, the Assessing Officer may assess or reassess the income in respect of any issue which escaped assessment and which comes to his notice subsequently in the course of reassessment proceedings. The explanation further provides that this would be so notwithstanding that the reasons for such issue have not been included in the reasons recorded under Section 148(2).

26. If the contention of the assessee that even after introduction of Explanation 3 to Section 147 of the Act, the situation has not

undergone any material change is accepted, the question that immediately would come to one's mind is, what then was the purpose of introducing such an explanation. An argument may arise that if before and after introduction of Explanation 3, the nature of jurisdiction exercised by the Assessing Officer was not to undergo any change, would Explanation 3 not be rendered redundant. Would such a situation not run counter to a well known legal principle that the Legislature cannot be seen to have enacted a redundant legislation and that every effort should be made to give such interpretation which ensures that a provision in a statute is not rendering otiose. Such question may have led to some interesting discussion. However, the entire issue has been put beyond any pale of controversy by virtue of the explanatory memorandum for introducing such explanation. Such explanatory memorandum reads as under:

"Clarificatory amendment in respect of reassessment Proceeding under section 147

The existing provisions of section 147 provides, inter alia, that if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for reopening the assessment. Further, he may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.

Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not

empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to assessment year 1989-1990 and subsequent years."

27. From the above, it can be seen that the explanation was meant to be clarificatory in nature and to put the issue beyond any legal controversy. When the Legislature found that in face of the provisions contained in Section 147 of the Act post 01.04.1989 some of the courts had taken a view that the Assessing Officer is restricted to the reassessment proceedings only on issues in respect of which the reasons were recorded for reopening the assessment, such explanation was introduced in the statute. Thus, the explanation was meant to be merely clarificatory in nature and was introduced with the purpose of putting at rest the legal controversy regarding the true interpretation of Section 147 of the Act which had arisen on account of certain judicial pronouncements. We have noticed that prior to enactment of Explanation 3 to Section 147, Punjab and Haryana High Court in case of Commissioner of Income Tax v. Atlas Cycle

Industries reported in 180 ITR 319 (supra) had taken a restricted view of the power of the Assessing Officer to make any addition on the grounds not mentioned in the reasons recorded for reopening the assessment. We may also notice that Kerela High Court in case of Travencore Cements Ltd. v. Asstt. CIT [2008] 305 ITR 170/[2009] 179 Taxman 117 had taken somewhat similar stand.

28. Explanation 3 to Section 147 of the Act thus does not in any manner, even purport to expand the powers of the Assessing Officer under Section 147 of the Act. In any case, an explanation cannot expand the scope and sweep of the main body of the statutory provision. In case of S.Sundaram Pillal v. V.R. Pattabiraman AIR 1985 (SC) 582 the Supreme Court observed that, an explanation added to a statutory provision is not a substantive provision but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities

which may have crept in the statutory provision. It was observed as under:

> "52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-
>
> (a) to explain the meaning and intendment of the Act itself.
>
> (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.
>
> (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.
>
> (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which

> is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment.
>
> (e) It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

29. Above decision has been referred to and relied upon in several subsequent decisions. Above proposition being well settled, it is not necessary to refer to all such decisions."

10. It is pertinent to note that Explanation 3 to Section 147 was inserted by Finance (No. 2) Act, 2009, which provides that

even though the notice issued under Section 148 containing the reasons for reopening of the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, yet the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, provided such issue comes to his notice subsequently in the course of proceedings. However, the amendment by insertion of Explanation 3 would not override the necessity of fulfilling the conditions set out in the substantive part of Section 147 of the Act that there was a failure on the part of the assessee to make a true and full disclosure of the income escaping assessment when there is no income that has escaped assessment as per the reasons

recorded, and when no addition is made on account of the reasons for which the reassessment was initiated. The ratio of the decision of this Court has been reiterated by the Hon'ble Bombay High Court and the Delhi High Court in the decisions relied upon on behalf of the assessee. The Hon'ble Supreme Court has also dismissed the SLP arising out of the judgment and order passed by the Delhi High Court in case of Jakhotia Plastics Private Limited (Supra).

11. In view of the above conspectus of law and the settled legal position when the Tribunal has followed the decision of the jurisdictional High Court, we do not find any legal infirmity in the impugned order of the Tribunal. We are of the opinion that no question of law, much less any

substantial question of law, arises from the impugned order of the Tribunal. The appeal, accordingly stands dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

JYOTI V. JANI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: JYOTIBEN VINODKUMAR JANI(HC00213), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 07/08/2026 16:19:44