

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11087 of 2022****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
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PUNJAB NATIONAL BANK
 Versus
 INCOME TAX OFFICER, WARD 1(1) & ORS.

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Appearance:

MR TEJ SHAH(5743) for the Petitioner(s) No. 1
 MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1
 SERVED BY RPAD (N) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 17/03/2025
ORAL JUDGMENT

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

1. Heard learned advocate Mr. S. Krishnan for
 learned advocate Mr. Tej Shah for the
 petitioner and learned Senior Standing

Counsel Mr. Nikunt Raval for the respondent.

2. The petitioner-Punjab National Bank has filed this petition praying for quashing and setting aside the show cause notice dated 28.03.2021 issued under section 148 of the Income Tax Act, 1961 [for short 'the Act'] by respondent No.1-Income Tax Officer, Ward No.1(1), Bharuch and the assessment order dated 30.03.2022 passed by respondent No.1 together with Notices dated 31.03.2022 for levy of penalty under section 274 read with section 271AAC(1), 272A(1) (d) and 271F of the Act.

3. Rule returnable forthwith. Learned advocate Mr. Nikunt Raval waives service of notice of rule for the respondent.

4. Having regard to the controversy which is involved in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

5. Brief facts of the case are as under:

5.1 The petitioner-Bank is successor entity of erstwhile Oriental Bank of Commerce ['OBC' for short] which was a nationalized bank engaged in banking activities on Pan-India basis having PAN Number allotted by the respondent "AAACO0191M".

5.2 For the Assessment Year 2009-10, when TDS returns of Regional Offices/Branches of several classes tax payers were filed by the regional offices/

branches of the OBC, a PAN bearing number 'AAACO7436M' was obtained for TDS compliances of Bharuch Branch. At the relevant time, the said OBC Bank received a letter dated 09.08.2012 as well as notice of the same date under section 142(1) of the Act from respondent No.1 for not filing return of income for Assessment Years 2009-10 and 2010-11 which was responded by the OBC Bank by filing provisional receipts/TDS returns of said branch for the relevant period stating that only TDS returns of the said branch have been filed under the said PAN.

5.3 The OBC thereafter, again received communication dated 13.02.2013 from respondent No.1 for A.Ys. 2010-11 and 2011-12 addressed to its Bharuch Branch

stating that as per the record, return of income for A.Y. 2009-10 and A.Y. 2010-11 were not filed.

5.4 In reply, OBC Bank, by letter dated 23.02.2013 clarified that under PAN "AAACO0191M", it was duly filing returns of income regularly and being assessed at New Delhi and has already made a request for cancellation of PAN "AAACO7436M" through its head office. A specific request was also made to respondent No.1 by the said letter surrendering the said PAN alongwith screenshot of the correct PAN of the OBC being AAACO0191M.

5.5 It appears that respondent No.1 again by letter dated 22.07.2013 made inquiries for non-filing of return for Assessment Years 2010-2011 and 2011-12 in

the PAN "AAACO7436M" which was already requested for cancellation by the OBC Bank.

5.6 The OBC Bank by letter dated 30.07.2013 clarified that by letter dated 23.02.2013, a request is made to cancel PAN "AAACO7436M" as regular assessment of OBC Bank was undertaken at New Delhi in its correct PAN "AAACO0191M". Thereafter, no further proceedings were initiated by respondent No.1.

5.7 By Notification dated 04.03.2020, in the Official Gazette of India, OBC Bank stood amalgamated with the petitioner-Punjab National Bank ['PNB' for short] w.e.f. 1st April, 2020. Accordingly, the OBC Bank ceased to exist, and returns of income were filed by the petitioner-PNB

under its PAN "AAACP0165G" being **part** of PNB.

5.8 It is the case of the petitioner that after lapse of Eight years after a specific request for cancellation of PAN "AAACO7436M" being made before the respondent No.1 and a year after OBC Bank ceased to exist, respondent No.1 issued the impugned Notice dated 28.03.2021 under section 148 of the Act in name of OBC Bank at Bharuch Branch seeking to reopen assessment for A.Y. 2017-18 under PAN "AAACO7436M".

5.9 It is the case of the petitioner-PNB Bank that a notice dated 28.03.2021 as well as subsequent notices issued by respondent No.1 on ITBA portal linked with PAN "AAACO7436M" could not be assessed or

received by the petitioner since the portal relating to PAN "AAAC07436M" could not have been legally assessed by the petitioner-PNB.

5.10 The respondent No.1 again by notice dated 23.08.2021 issued under section 142(1) of the Act referring to PAN "AAAC07436M" asked the OBC Bank, Bharuch Branch to show cause as to any return of income for A.Y. 2017-18 was not filed. A reference was also made to purchase of time deposits aggregating Rs. 393.97 Crore during Financial Year 2016-17 and documentary evidence were called for. It is the case of the petitioner that such notice was never received.

5.11 Thereafter, respondent No.2, Additional Joint/Deputy/Assistant

Commissioner of Income Tax, National E-Assessment Centre, Delhi, issued notices dated 10.12.2021, 06.01.2022 and 25.01.2022 posted on the ITBA Portal page of the unused PAN "AAACO7436M" and therefore, never served upon the petitioner-PNB raising similar queries as to non-filing of return of income for A.Y. 2017-18 by the OBC Bank.

5.12 The petitioner thereafter notice dated 11.02.2022 was physically served by Speed Post by respondent No.1 to the Bharuch Branch of the PNB which was erstwhile branch of the OBC. The said notice was received by PNB, Bharuch Branch on 17.02.2022 which required a compliance on 18.02.2022.

5.13 The petitioner therefore, by reply dated 18.02.2022 to the notice dated 11.02.2022 explained in detail that with effect from 01.04.2020, OBC had been amalgamated with the PNB and therefore, the petitioner-PNB would be handling the assessment proceedings. It was also pointed out that the OBC Bank was a nationalized bank and had been filing regular returns of income under PAN "AAACO0191M" and was regularly assessed under the said PAN at New Delhi. It was also submitted that for A.Y. 2017-18, the OBC Bank had filed return of income on 28.10.2017 which had been revised on 29.03.2019 and Assessment Order dated 30.12.2019 under section 143(3) of the Act was also passed by the Income Tax Department and there is no pending

proceedings on the ITBA portal page of the OBC Bank under PAN "AAACO0191M" and therefore, it was requested that the proceedings initiated by the impugned notice dated 28.03.2021 is required to be dropped as the same would be invalid and void. The petitioner also submitted a copy of the assessment order dated 30.12.2019 for A.Y. 2017-18 passed in case of OBC Bank as well as copy of the acknowledgement of the revised return filed on 29.03.2019 for the A.Y 2017-18.

It is also the case of the petitioner that the officers of the petitioner-PNB visited office of respondent No.1 on 18.02.2022 with reply to the notice dated 11.02.2022. However, the same was refused to be accepted by the respondent No.1 and it was

advised to post such reply online to the National Faceless Assessment Centre. However, the same was not possible due to wrong PAN being quoted in the notice as well as the impossibility of a non-existent OBC for filing return of income. It is the case of the petitioner that inspite of the above facts being disclosed to the respondent No.1, notice dated 20.02.2022 requiring compliance on 07.03.2022 was sent on 04.03.2022 which was received by the Bharuch Branch of the petitioner-PNB by speed post only on 08.03.2022. Respondent No.1 thereafter, issued show-cause notice dated 20.03.2022 again in name of the OBC-an amalgamated entity at Bharuch address with PAN "AAA07436M" wherein, respondent No.1 is claimed to have initiated proceedings

under section 148 of the Act after prior approval of Principal CIT.

5.14 It is the case of the petitioner that in response to the notice dated 20.03.2022, again the officers of the petitioner-Bank, Bharuch Branch visited the office of respondent No.1 asking for details in respect of adverse inference which was sought to be raised. However, the same was refused by respondent No.1.

5.15 It appears that respondent No.1, without considering written submissions and the reply filed by the petitioner, passed impugned assessment order determining the taxable income of Rs. 393.97 Crore raising a demand of Rs. 648.26 Crore in name of erstwhile OBC,

Bharuch Branch inspite of informing by the petitioner that the OBC has already been merged with the petitioner-PNB w.e.f. 01.04.2020 and the PAN being AAAC07436M" was already cancelled in the Year 2013.

6. Learned advocate Mr. S.Krishnan for the petitioner submitted that the impugned order is a classic example of non-application of mind on behalf of the respondent-Assessing Officer as inspite of making submissions by the petitioner-Bank which is duly recorded in the assessment order but the same was not considered and ignored for making high-pitched assessment on an entity which does not exist and the PAN number which does not exist for more than Eight years.

6.1 It was submitted that the impugned assessment order is therefore, liable to be quashed and set aside being passed on a non-existing entity 'OBC' and the non-existing PAN Number being "AAACO7436M" which was already requested to be cancelled by the erstwhile OBC Bank in the Year 2013.

6.2 It was further submitted that the impugned assessment order dated 30.03.2022 is based upon the non-filing of return in response to the notice under section 148 however, when the petitioner-Bank, in no uncertain and clear language, explained to respondent No.1 that PAN "AAACO7436M" was already surrendered and cancelled in the Year 2013 which pertained to OBC Bank,

Bharuch Branch and was obtained for filing TDS return at the relevant time coupled with the fact that OBC Bank had already been merged with PNB w.e.f. 01.04.2020 and therefore, no assessment could be made in the name of OBC Bank in PAN being AAAC07436M. It was submitted that however, respondent No.1 has passed impugned order under section 69 of the Act without application of mind and without considering the facts emerging from the record and therefore, impugned order is liable to be quashed and set aside with exemplary cost.

7. Per contra, learned Senior Standing Counsel Mr. Nikunt Raval submitted that pursuant to the order passed by this Court on 11.03.2025, he has taken instructions

from respondent No.1 that the respondent No.1 shall not enforce the demand as the order was passed in name of pre-merged entity.

7.1 Learned Counsel Mr. Raval has referred to and relied upon the following averments made in the affidavit-in-reply filed on behalf of the respondent No.1:

"7. With respect to the contentions raised in Para 3, it is submitted as under:

(a) That the notice u/s.148 of the Act has been served on the address mentioned in PAN database.

(b) It is submitted that as per the Income Tax Act, 1961, a case can be re-opened under certain time-limit and the case of the assessee fell under the

said criteria, thus, the notice issued and served is not bad in law.

(c) It is submitted that with regard to the assessee's claim that it has submitted written request to the Department for cancellation of said PAN, it is submitted that the assessee has claimed to have submitted the said application 8 years ago and copy of the same has not been produced during the course of assessment, Further, the assessee's claim itself is of contradictory in nature as the relevant financial transaction took place during FY 2016-17, which does not fall beyond 5 years from the date of issuance of notice u/s.148 of the Act. Also, the assessee has claimed in its writ petition that it has submitted application for surrender/cancellation of PAN in 2012, then howcome, the assessee continued to use the same PAN during the FY2016-17. Hence, assessee's claim is not found to be correct.

(d) It is submitted that the case of the assessee was reopened and notice under section 148 dated 31.03.2021 was issued after obtaining prior approval of the Additional Commissioner of Income Tax, Range 2(1), Vadodara. The information regarding prior approval of the Additional Commissioner of Income Tax, Range-2(1), Vadodara, is enumerated on the ibid notice.

(e) It is submitted that the notices u/s.142(1) of the Act was issued on 23.08.2021, 11.02.2022 and 28.02.2022. It is pertinent to mention that in all the notices under section 142(1) of the Act, a point was mentioned very clearly which reads as "The above mentioned evidence/information is to be furnished online electronically in 'E-proceeding' facility through your account in 'e-filing' website of Income Tax Department." However, no reply has been submitted by assessee during the course of assessment by the way mentioned above.

(f) It is submitted that during the course of assessment proceeding, show-cause notice was issued to the assessee on 20.03.2022 stating that the Assessee has neither filed return of income in response to the notice u/s 148 of the Act nor submitted any documents evidence called for electronically in 'proceeding' facility through assessee's account in 'e-filing' website of the Income Tax Department. The Assessee was requested to furnish its reply alongwith details documentary evidences and clarification, if any, online on or before 24.03.2022. However, the assessee neither filed any reply nor filed any explanation through e-proceedings in response to the above notice, thus, it was clear that the assessee had nothing to say in the matter.

(g) It is submitted that the assessee has failed to prove with documentary evidences during the course of assessment proceedings that the

investment/amount under question has been assessed on the PAN for which assessee has claimed that assessment proceeding for A.Y.2017-18 relevant to FY 2016-17 has been completed which left this office with no other option, but to add the same as income for the relevant assessment year.

(h) It is submitted that the Assessee has claimed that the show cause notice dated 20.03.2022 was served on 24 03.2022 requesting reply on the same day. In this connection, it is submitted that the notice was served through speed post and it is not just that the assessee has not been given time to submit it's reply as the assessment order in this case was passed on 30.03.2022, which was still 6 days after the service of above show-cause notice.

(i) It is submitted that the Assessee has claimed that section 69 of the Act stands triggered only when the condition precedent therein, i.e. factum of investment made not recorded in books of account, is proved. In this connection, it is submitted that the assessee has failed to prove that the investment made during the relevant FY 2016-17 has been recorded and accordingly assessed for AY2017-18. In view of above, the said investment remain unexplained and attracts section 69 correctly.

(j) It is submitted that assessment order has been passed under section 147 read with section 144 after making addition of Rs.3,93,97,96,000/on account of unexplained investment of the assessee u/s.69 of the I.T. Act.

(k) It is submitted that with regard to the assessee's claim that the show cause notice states that notice u/s.148 was issued after prior approval of Pr.CIT, it is submitted that the notice u/s.148 was issued with prior approval of Jt.CIT, Range-2(1), Vadodara which is clearly mentioned on notice u/s.148 of the Act dated 28.03.2021. The mention of Pr.CIT on show-cause notice is merely a typing mistake and nothing else as both of them are approving authorities for issuing of notice u/s.148 of the Act depending upon the assessment years.

(l) It is submitted that the assessee has claimed that the impugned order dated 30.03.2022 creates a pejorative demand of Rs.648.26 crores, which is a huge sum of money that could de-stabilize the Petitioner's business operations. In this connection, it is submitted that the assessment proceeding has been completed taking into consideration the

total income of the assessee and the demand raised is the natural outcome of the same.

(m) It is submitted that the assessee has claimed that penalties under various provisions stand initiated, which would lead to multiple proceedings, which makes the present proceedings efficacious, as it would prevent multiplicity of litigation. In this connection, it is submitted that penalty proceedings are initiated on the basis of nature of additions and natural outcome of assessment proceedings.

(n) It is submitted that in conclusion, it is emphasized that proceedings u/s. 147 of the Act for A.Y.2017-18 in the case of the assessee is valid in the light of the facts and the established law. The procedural requirements such as proper recording of reasons, obtaining approval from specified higher authority, issuing of notices

within limitation date and forwarding of reasons have been met. In addition, the matters raised by the assessee have been dealt with in an elaborate manner above."

7.2 Referring to the above averments, it was submitted that respondent No.1 has justified in passing the impugned assessment order as the same was passed after obtaining the prior approval of the Additional Commissioner of Income Tax, Range-2(1), Vadodara, which was already disclosed in the notice issued by respondent No.1. It was further pointed out that with regard to the claim of the petitioner that PAN number was cancelled in the Year 2012, there is no answer by the petitioner that the said PAN continued to be used during the Financial Year 2016-17.

7.3 It was further pointed out that the petitioner has failed to file any reply or justification for use of PAN "AAAC07436M" which already cancelled in the Year 2012-13 during the Financial Year 2016-17 and therefore, respondent No.1 was justified in considering the transactions carried out in the said PAN for the purpose of assessment for making addition of Rs. 393.97 Crore on account of the unexplained investment of the assessee under section 69 of the Act.

8. Having heard learned advocate for the respective parties and considering the facts of the case, the following facts are not in dispute:

(i) The Oriental Bank of Commerce has been merged with the petitioner-Punjab National

Bank w.e.f. 01.04.2020;

(ii) The OBC Bank was a nationalized bank and was regularly filing return of income in PAN "AAACO191M" and was regularly assessed at New Delhi;

(iii) For the Assessment Year 2017-18, the OBC Bank has filed return of income on 28.10.2017 which was revised on 29.03.2019 and Assessment Order for A.Y. 2017-18 was passed on 30.12.2019 under section 143(3) of the Act by the Assessing Officer at New Delhi;

(iv) It is also not in dispute that PAN Number "AAACO7436M" was obtained by Bharuch Branch of the erstwhile OBC for filing TDS return and was subsequently requested for cancellation in the Year 2013;

(v) It also appears on perusal of the impugned assessment order that the same is passed in name of OBC Bank, Bharuch Branch for PAN "AAACO7436M" for A.Y. 2017-18 on the basis of the Multi Year MNS Data which revealed that the OBC Bank has purchased the time deposits other than a time deposit made through renewal of another time deposits aggregating to Rs. 393.97 Crore during the previous year 2016-17 relevant to A.Y. 2017-18 which was not offered to tax, however, when it was submitted to the respondent No.1 by the petitioner-PNB which is duly recorded in the assessment order (Page 117 of the paper-book) that the OBC was merged with PNB and the jurisdiction of the erstwhile OBC was in New Delhi having PAN "AAACO0191M", but the Assessing Officer,

without considering such submission, proceeded to finalize the assessment on the data available on examination of the Multi Year MNS Data by making addition of Rs. 393.97 Crore raising demand of Rs. 648.26 Crore on a non-existing OBC for A.Y. 2017-18 by the impugned assessment order passed under section 147 read with section 144 of the Act.

9. From the undisputed facts stated here-in-above, it is apparent that respondent No.1 as well as NFAC Center who has passed the impugned order is without application of mind and without considering the fact that the OBC in whose name impugned assessment order is passed, does not exist after 01.04.2020 and therefore, no assessment

order could have been passed in the name of the OBC having PAN Number "AAACO7436M".

10. Respondent No.1 has, without taking into consideration the return of income filed by the OBC for A.Y. 2017-18, passed the assessment order dated 30.12.2019 under section 143(3) of the Act for the said year and has not even bothered to find as to whether the amount of Rs. 393.97 Crore relating to the purchase of time deposits have been duly accounted for or reflected in the return of income of the OBC Bank or not and simply on the basis of the Multi Year MNS Data, accepting the same as a gospel truth, has proceeded to pass impugned assessment order by making high pitch assessment making addition of Rs. 393.97 Crore brushing aside the

submissions made by the petitioner-PNB. On the basis of the Multi Year MNS data which is an abstract phenomenon unknown to anyone nor disclosed in the assessment order as to what type of Multi Year MNS Data is made available to the Assessing Officer, the Assessing Officer has proceeded to make addition without making any inquiry ignoring the factual submission made by the petitioner-PNB to the effect that the OBC Bank does not exist after 01.04.2020 and therefore, there could not have been any assessment order being passed in the name of the said Bank having PAN "AAAC07436M".

11. It is also apparent from the record that the impugned assessment proceedings have been initiated with prior permission of

the higher authorities under section 151 of the Act. It appears that the Additional CIT, Range-2(1), Vadodra, also without application of mind, has sanctioned the approval for issuance of the notice under section 148 of the Act.

12. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned Assessment order is hereby quashed and set aside. At this juncture, in the facts of the case it is apparent that the respondents, oblivious of the facts submitted by the petitioner-PNB, has proceeded to pass impugned assessment order resulting into high-pitch assessment of Rs. 393.97 Crore attracting the tax demand of Rs. 648.26 Crore and such high-pitch assessment order could not

have been passed against a non-existing OBC under PAN "AAACO7436M" which was already requested to be cancelled since 2013 and hence, and for no fault on part of the petitioner, the impugned order is passed on account of total non-application of mind and negligence on part of the respondent No.1. We therefore deem it to be a fit case to impose exemplary cost of Rs. 1 Crore upon the respondent to be paid to the petitioner-Bank for passing such high pitched assessment order contrary to the facts available on record.

13. After the judgement was dictated in the open Court, whereby, we deemed it fit to impose exemplary cost of Rs. 1 Crore upon the respondents while signing the present judgement, we felt that an opportunity should be granted to the respondents to

show cause as to why such cost should not be imposed.

14. We are conscious of the fact that quantum of the cost proposed to be imposed by us is a small fraction of the quantum of the high-pitched assessment and consequent demand raised upon the petitioner-PNB.

15. In view of the above, let this matter be listed for further hearing on 04.04.2025 granting an opportunity to the respondent to show cause as to why the cost of Rs. 1 Crore should not be imposed.

(BHARGAV D. KARIA, J)

(D.N.RAY, J)

JYOTI V. JANI