

Sanand Properties P. Ltd. v. Joint Commissioner of Income Tax, Range 6 and Ors.

Civil Appeal No. 9107 of 2012 / Civil Appeal No. 744 of 2013 / Civil Appeal No. 19487 of 2017
2026 INSC 472 | 2026-05-12

Reopening upheld and an AOP member's fixed gross-receipts share held taxable as business income

147 | 148 | 143(3) | 131 | 133A | 67A | 86 | 167B(2) | 80-IB(10) | 115JB | 271(1)(c)

Two-judge Bench | J.B. Pardiwala | K.V. Viswanathan

Assessment years: 2007-08, 2008-09, 2009-10

01 FACTS OF THE CASE

Sanand Properties P. Ltd. (SPPL) and Raviraj Kothari & Co. formed the association of persons Fortaleza Developers under an agreement dated 29 April 2003 to develop residential housing. Clause 7 entitled SPPL to 35% of gross sale receipts. All project expenses were to be met from the remaining 65%, with the balance belonging to the other member. SPPL treated its receipts as a share of the AOP's profits rather than income separately taxable in its hands. [Judgment, paras. 8, 12, 96-97, PDF pp. 6-59](#)

After scrutiny assessments for AYs 2007-08 and 2008-09, a survey on 23 December 2010 produced documents and a director's statement. On 11 January 2011, the Revenue issued reopening notices asserting that SPPL's 35% entitlement was consideration linked to development rights or a share of revenue, not a profit distribution. The Bombay High Court invalidated reopening for AY 2007-08 but upheld it for AY 2008-09. These rulings produced the Revenue's Civil Appeal No. 744 of 2013 and SPPL's Civil Appeal No. 9107 of 2012 respectively. [Judgment, paras. 5-6, 9-15, 65, PDF pp. 4-39](#)

A third appeal, Civil Appeal No. 19487 of 2017, concerned the taxability of SPPL's receipts for AYs 2008-09 and 2009-10. The Tribunal and High Court had accepted SPPL's profit-share characterization, relying on the interpretation adopted in parallel proceedings concerning the AOP. The Supreme Court heard all three appeals together but examined reopening jurisdiction separately from the substantive character of the receipt. [Judgment, paras. 7, 26-33, 55-56, PDF pp. 5-28](#)

Source: See the proposition-specific paragraph and PDF-page links in the text.

02 DISCUSSION BY THE HON'BLE COURT

On reopening, the Hon'ble Court held that jurisdiction must be tested by the reasons recorded when the section 148 notice was issued. A later finding that income was taxable could not repair defective recorded reasons; conversely, a valid prima facie belief would not become invalid merely because reassessment ultimately favoured the taxpayer. Applying *Kelvinator*, the Court required tangible material connected to the belief of escapement and distinguished reassessment from review of an opinion already formed. [Judgment, paras. 62-64, PDF pp. 33-37](#)

The notices were within four years of the end of the relevant assessment years, so the additional failure-to-disclose condition in the first proviso to the then section 147 did not apply. Nevertheless, the manner of disclosure remained relevant to whether the original officer had formed an opinion. Although the AOP agreement had been filed, the Court found that the gross-receipts entitlement in clause 7 had not been brought to the fore. For AY 2007-08, the original discussion of a 35:65 arrangement concerned a legally distinct commercial-project joint venture with a different counterparty. For AY 2008-09, the discussion concerned section 115JB and assumed, without examining, that the AOP receipt was profit. The survey material and director's statement thus furnished fresh information on an issue not previously adjudicated. [Judgment, paras. 68-82, PDF pp. 40-52](#)

Both reopenings were consequently valid. For AY 2008-09, however, the Supreme Court rejected the High Court's reliance on the AOP's assessment orders, which were outside the recorded reasons. Upholding the result on the recorded material did not validate that reasoning. Referring to *GKN Driveshafts*, the Court stressed the assessee's right to know and object to the actual grounds for reopening. [Judgment, paras. 83-87, PDF pp. 53-55](#)

On the merits, construction of clause 7, which founded the parties' rights, was a question of law. The interpretation adopted in parallel AOP proceedings did not prevent Supreme Court scrutiny. SPPL's entitlement attached to 35% of receipts before project expenses and was not contingent on the AOP earning a profit. Applying *Sitaldas Tirathdas*, the Court held that the pre-existing enforceable entitlement diverted that portion at accrual to SPPL: the AOP collected and disbursed it on SPPL's behalf rather than first earning it and then applying its own income. As all project expenses fell on the other 65%, SPPL's receipt was a revenue/business receipt, not its share of AOP profits. [Judgment, paras. 93-105, PDF pp. 57-62](#)

Source: See the proposition-specific paragraph and PDF-page links in the text.

03 JUDICIAL DECISION

The Court upheld reopening for AYs 2007-08 and 2008-09 and separately held SPPL's 35% receipt taxable as business income for AYs 2008-09 and 2009-10. It allowed the Revenue's appeal concerning AY 2007-08 reopening, dismissed SPPL's appeal concerning AY 2008-09 reopening, and allowed the Revenue's merits appeal, setting aside the contrary High Court and Tribunal orders. The reopening ruling for AY 2007-08 was expressly distinguished from the merits of the assessment to follow. [Judgment, paras. 84-87, 105, 114-118, 126-128, PDF pp. 53-69](#)

Source: See the proposition-specific paragraph and PDF-page links in the text.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue, in all three connected appeals; one common judgment

In favour of the Revenue in each connected appeal: Civil Appeal No. 744 of 2013 allowed; Civil Appeal No. 9107 of 2012 dismissed; Civil Appeal No. 19487 of 2017 allowed. For the last appeal, the receipts for AYs 2008-09 and 2009-10 were held taxable in SPPL's hands as business receipts. [Judgment, paras. 114-118, 126-128, PDF pp. 65-69](#)

See decision and scope limits

Source: See the proposition-specific paragraph and PDF-page links in the text.

05 AKHB REVIEW POINT

The decision has two distinct research uses. For reopening, examine the actual issue considered in the original scrutiny and the particular recorded material relied on later; merely filing an agreement or mentioning a receipt does not establish an earlier opinion on its legal character. For AOP arrangements, trace when the member's entitlement arises, whether it bears project expenses and whether it depends on profits. The result here turns on clause 7's protected gross-receipts entitlement. It is not a general holding that every AOP-member distribution is taxable, nor an independent ruling that every AOP claiming section 80-IB(10) loses section 86 protection for genuine profit distributions. [Judgment, paras. 72-87, 96-105, 124-127, PDF pp. 46-69](#)

Source: See the proposition-specific paragraph and PDF-page links in the text.

CONNECTED APPEAL: Civil Appeal No. 744 of 2013

issue: Validity of reopening

disposition: Allowed; High Court judgment set aside; reopening notice upheld

in whose favour: Revenue

CONNECTED APPEAL: Civil Appeal No. 9107 of 2012

issue: Validity of reopening

disposition: Dismissed; High Court outcome upheld on different reasoning

in whose favour: Revenue

CONNECTED APPEAL: Civil Appeal No. 19487 of 2017

issue: Substantive taxability of 35% receipt

disposition: Allowed; High Court and ITAT orders set aside; SPPL receipt taxable as business receipt
in whose favour: Revenue

SOURCE & VERIFICATION[Original Hon'ble Supreme Court PDF](#)

Complete identified source PDF: 69 pages. Original bytes preserved.

[Open cited source rendition](#)

One common judgment, not three independent authored opinions.

The reopening and substantive merits questions are separately decided and must remain separately indexed.

Revenue's paragraph 50 argument concerning section 86 where the AOP paid no tax after deduction is a submission; the dispositive merits reasoning instead characterizes these receipts as SPPL's own revenue.

Section 115JB is material to distinguishing the original assessment issue, but the judgment should not be promoted as a general standalone MAT ruling.

No final liability amount is independently computed by this review; no penalty merits holding is asserted.

The quoted recorded reasons in paragraph 65 refer to an AOP agreement dated 28.04.2003; the Court identifies the governing agreement throughout, including paragraphs 8, 55, 92 and 96, as dated 29.04.2003. The review follows the Court's governing identification and does not silently alter the quotation.

The narrative fixes the reopening notices at 11.01.2011 (paragraph 10); counsel's submission in paragraph 53 refers to a common notice dated 07.02.2011. The review follows the Court's narrative date and does not treat counsel's date as a competing judicial finding.

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PDF physical page 1 is the cover; PDF page 2 is printed page 1. Printed judgment page n corresponds to PDF page n+1. All links in this review use one-based PDF physical pages.

STATUTORY SCOPE

The reopening analysis concerns the historical sections 147 and 148 applicable to notices issued in January 2011. The judgment identifies the statutory versions it discusses in paragraphs 57-59 and the within-four-years setting in paragraph 72. This review does not apply that framework automatically to later reassessment regimes. Current statutory text, subsequent amendments, transition/savings provisions and any mapping to the Income-tax Act, 2025 have not been independently verified. Later judicial treatment has not been verified.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official original - PDF pages: 69](#)

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