IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5482 of 2023

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

==

Approved for Reporting	Yes	No
		✔

==

NECKLACE DIAMOND
Versus
INCOME TAX OFFICER WARD - 3(2)(1)

==

Appearance:
MR MANISH J SHAH(1320) for the Petitioner(s) No. 1
KARAN G SANGHANI(7945) for the Respondent(s) No. 1

==

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

Date : 01/09/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the petitioner has prayed for quashing and setting aside the order passed under Section 148A(d) of the Income Tax Act, 1961 (for short ‘the Act’), dated 31.07.2022 and the notice issued under Section 148 of the Act of the even date to the petitioner seeking reopening of the assessment for the Assessment Year (for short ‘A.Y.’) 2017-18.

Brief Facts

2. The petitioner filed its return of income for the A.Y.2017-18, declaring total income of Rs.4,73,481/- on 01.08.2017. No scrutiny assessment was undertaken on the return of income

and the same was accepted as such. Subsequently, the petitioner was issue notice under Section 148 of the Act, dated 28.04.2021, by the respondent alleging that the income has escaped assessment. Subsequently, another notice was issued under Section 148A(b) of the Act, dated 30.05.2022.

2.1 In the show cause notices, it has been alleged that the petitioner has received accommodation entry of Rs.1,33,72,000/- from one Shripal Vrajlal Vora. The petitioner objected to the same by filing a detailed letter dated 13.06.2022. The explanation has not been accepted by the respondent resulting into the order under Section 148A(d) of the Act, which is impugned in the writ petition.

3. At the outset, learned advocate, Mr.Manish J. Shah appearing for the petitioner has submitted that the reopening of the assessment is premised on the incriminating material impounded in survey action carried out at the premises of one Shripal Vora on 14.12.2016 and subsequently, the survey action was converted to search action under Section 132 of the Act on 16.12.2016. While referring to the provision of Section 153C of the Act, it is submitted that the Assessing Officer has erred in resorting to the provisions of Section 148 of the Act by issuing a notice since the appropriate reopening, is only permissible under the provisions of Section 153C of the Act. He has also referred to the provision of sub-section (1) of Section 149 of the Act, which prescribes the limitation period for issuance of notice under Section 148 of the Act and the same also stipulates that the provisions of Section 153A or 153C are to be resorted after looking at the reopening of the assessment

for the A.Y.2017-18. In support of his submission, he has also placed reliance on the judgment of this Court dated 07.01.2026 in the case of *Paras Chandreshbhai Koticha vs. Income Tax Officer Ward – 1(2)(2)*, *Special Civil Application No.17933 of 2018 and allied matters*. Thus, it is urged that the writ petition may be allowed by setting aside the impugned notice and the order.

4. Opposing the present writ petition and the foregoing submissions, learned Senior Standing Counsel, Mr.Karan G. Sanghani appearing for the respondent has submitted that at this stage, the reopening of the assessment may not be quashed as it is precisely reopened by issuance of notices under Section 148 of the Act. He has submitted that on receipt of the information by the Deputy Commissioner of Income Tax, the survey action was initially carried out against one Shripal Vora and subsequently, it was converted into search action and during the search operation, several incriminating documents were found and seized involving the complicity of the present petitioner in providing the accommodation entries, the reopening of the assessment was undertaken by resorting to the provision of Section 148 of the Act. Thus, it is urged that the writ petition may not be entertained and the petitioner may be relegated to face the assessment proceedings.

5. The facts, which are established from the record, are that the petitioner filed his return of income of the A.Y.2017-18 on 01.08.2017 which is subsequently sought to be questioned and reopened on the basis of the incriminating material found during the survey and search action against one Shripal Vora.

A survey action under Section 133A of the Act was carried out on 14.12.2016 at the premises of Shripal Vora and subsequently, survey was converted into search action under Section 132 of the Act on 16.12.2016.

5.1 It is the case of the revenue that during the search operation, several incriminating documents were found and seized which revealed that Shripal Vora was involved in accommodation entry business and was charging commission towards the same. It is alleged that as per the information derived from such incriminating material, the petitioner was beneficiary to the transaction done with the entities controlled by Shripal Vora to the tune of Rs.1,33,72,000/- during the Financial Year (for short 'F.Y.') 2016-17. Thus, it is not in dispute that the reopening by resorting to the provisions of Section 148 of the Act is premised on the incriminating material found during the search action under Section 132 of the Act against Shripal Vora.

6. At this stage, we may refer to the decision rendered by this Court in the case of ***Paras Chandreshbhai Koticha (Supra),*** dated 07.01.2026, where this Court after threadbare examination of the provisions of Section 153A/153C of the Act and provisions of Section 147/148 of the Act in context of reopening of the assessment pursuant to the search actions conducted under Section 132/132A of the Act has held thus:

"76. We answer the issues by summarizing the observations as under:

1) It is mandatory for the Assessing Officer of a "searched person" (Section 153A of the Act) to record satisfaction on the incriminating material found during the search under Sections 132/132A of the Act and communicate the same to the jurisdictional Assessing

Officer of the "other/third person".

2) *In the absence of any satisfaction note recorded by the Assessing Officer of the searched person, the jurisdictional Assessing Officer of the other person cannot assume jurisdiction under Section 153C of the Act solely on the basis of material sent to him by the Assessing Officer of the searched person. In other words, the "other person" cannot be subjected to assessment/ reassessment under Section 153C of the Act on the material received by him sans a satisfaction note; hence, such an approach would be illegal, without jurisdiction, and liable to be quashed.*

3) *The jurisdictional Assessing Officer of the "other/searched person" (Section 153C) can invoke the provisions of Sections 147/148 of the Act only on the basis of material available to him from other sources, other than the incriminating material sent to him. In case a satisfaction note is recorded on the incriminating material and transmitted to him/her, then the only recourse available to the jurisdictional Assessing Officer is to proceed under Section 153C of the Act and not under Sections 147/148 of the Act.*

4) *In the case of assessees who are subjected to reassessment under the provisions of Section 153A of the Act, the Assessing Officer cannot switch over or invoke the provisions of Sections 147/148 of the Act on the basis of incriminating material found during the search and seizure conducted under Sections 132 or 132A of the Act. However, the Revenue cannot be restricted, barred, or left remediless from invoking the provisions of Sections 147/148 of the Act, subject to fulfillment of the conditions mentioned therein, and the assessment can be reopened on the basis of material collected post-search from any other independent source."*

7. Thus, as per the observations mentioned herein above, the only option available for the Jurisdictional Assessing Officer to assume the jurisdiction on the incriminating material found during the search proceedings under Section 132 of the Act, is to reopen the assessment under the provision of Section 153C of the Act and not under Sections 147/148 of the Act on the basis of the incriminating material available to him after recording the satisfaction.

8. We may also refer to the provision of Section 149 of the Act, which existed prior to the amendment of the section vide Finance Act, 2021. The same is as under:

"149. Time limit for notice.- *(1) No notice under section 148 shall be issued for the relevant assessment year,—*
(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-
(i) an asset;
(i) expenditure in respect of a transaction or in relation to an event or occasion;
(iii) an entry or entries in the books of account,
which has escaped assessment amounts to or is likely to amount to fifty lakh
rupees or more:

Provided that *no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before Ist day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:*

Provided further *that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

9. Thus, as per the second proviso since the search under Section 132 has been initiated before 31.03.2021, the provision of Section 148 will not get attracted. Hence, the present writ petition ***succeeds.*** The impugned notice and the impugned order dated 31.07.2022 are hereby quashed and set aside. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

NEHA /92