



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15184 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

**and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
		✓

GOPAL BHACHABHAI JATIYA
 Versus
 ITO WARD - 1 , GANDHIDHAM

Appearance:

MS. MANVI DAMLE, ADVOCATE FOR MR. JAIMIN R DAVE(7022) for the
Petitioner(s) No. 1

MS HIRVA R DAVE(10742) for the Petitioner(s) No. 1

MAUNIL G YAJNIK(9346) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 24/02/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Rule, returnable forthwith. Mr. Maunil Yajnik, learned Senior Standing Counsel waives service of notice of rule on behalf of the respondent.

2. On 17.02.2026, this Court passed the following order:

*“Heard learned advocate Ms. Manvi Damle for
 learned advocate Mr. Jaimin Dave for the petitioner.
 It is not in dispute that the sale deed dated*



28.08.2018 and 29.08.2018 respectively have been cancelled and the cancelled registered sale deeds are produced on record of the writ petition from page 86 onwards. It is noticed by us that after cancellation of the sale deeds, the payment has also been reversed. It further appears that the sale deeds have been cancelled because the original sale deeds were executed by fraudulent persons. Therefore, keeping the aforesaid facts, the Assessing Officer shall issue necessary orders/communication dealing with the aforesaid aspects by the next date of hearing. Hence, we direct the Assessing Officer/respondent to file necessary affidavit dealing with the aforesaid aspects by the next date of hearing.

List the matter on 24.02.2026.

To be listed on top of the Board.”

3. Today, learned Senior Standing Counsel Mr. Maunil Yajnik has tendered an additional affidavit dated 23.02.2026, the same is ordered to be taken on record. The Paragraph No. 2 of the additional affidavit reads as under:

“2. The deponent states that the said documents do appear to be cancellation of the registered sale deed by the competent court and subsequently it's effect on the revenue record and bank account details of the assessee whereas, the reversal of transaction consideration is shown to be reversed. However, the present deponent states that the said documents were not provided to the respondent authority during 148A proceedings and hence, the present deponent never had chance to verify the same. The same are being produced for the first time before this Honourable Court and hence, present deponent would humbly request this Honourable Court to remand the matter back for thoroughly re-verifying the aforesaid documents produced by way of additional affidavit.”

4. Thus, the respondent authority has admitted that for the first time before this Court, the petitioner has produced the documents relating to cancellation of the sale deed by the



competent authority and its effect having been given in the revenue record and the bank account details of the assessee.

5. Thus, it appears that during the assessment proceedings under Section 148A of the Income Tax Act, 1961, these documents were not produced. Learned Senior Standing Counsel Mr. Yajnik has urged that the matter may be remanded to the respondent authority to pass a fresh assessment order.

6. At this stage, Mr. Manvi Damle, learned advocate for the petitioner has pointed out the judgment of the Bombay High Court in the case of The Commissioner of Income Tax 8 v. M/s Lok Housing & Constructions Limited, (Income Tax Appeal No. 877 of 2013 decided on 13.04.2015) in support of her contention and submitted that the impugned order may be quashed and set aside.

7. We may, at this stage, refer to the observations of Paragraph No. 12 of the decision of the Bombay High Court in the case of M/s. Lok Housing & Constructions Limited (supra), which reads thus:

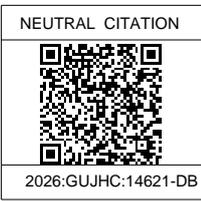
“12. On both counts, the Tribunal has in a detailed discussion of more than 40 paragraphs found that there is no substance in the objections of the Revenue. If the Revenue is trying to show that the relevant transactions were sham and not real, then it has to bring in satisfactory material. The Tribunal found in paras 37 to 40 of the impugned order that the income which was earlier disclosed was not as such because



the Agreements were terminable or could have been cancelled. Once they were have reverted back to cancelled, the properties the assessee. They are are duly reflected in the balance sheet and as assets of the assessee. There were revised accounts and which were also scrutinized. They were found to be in order and meeting the accounting practice adopted. Therefore, the accounting policy also could not have been faulted. In para 42 of the impugned order, the Tribunal held that income could not have really accrued because of the fact that these Agreements were cancelled. Then the issue of their cancellation has been gone into, and correct legal in extensive details. The principles were applied and a finding of fact is arrived at in para 48, that no income could be said to have really accrued to the assessee as a result of the five transactions in the immovable properties and income was chargeable to tax in the year under consideration. Once income had not accrued to in the real sense, original return represents wrong statement the then the which was corrected by the assessee by filing a revised return. Therefore, no hypothetical income of the assessee could have been brought to tax.”

8. The SLP against the said judgment being Civil Appeal No. 277 of 2016 has been dismissed by the Supreme Court on 24.04.2025.

9. Thus, in wake of the admitted fact that while passing the impugned orders and the notices, the Assessing Officer has not considered the factum of cancellation of sale deeds, the reversal of the payments and thus the impugned orders are hereby quashed and set aside, in view of the observations of



the Bombay High Court in the case of **The Commissioner of Income Tax 8 v. M/s Lok Housing & Constructions Limited (supra)**. Rule is made absolute.

(A. S. SUPEHIA, J)

SAJ GEORGE/DB/02

(PRANAV TRIVEDI,J)