

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 3627 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13383 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13390 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13403 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13405 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13408 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13411 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13419 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13549 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13563 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13573 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13586 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14479 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14505 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14526 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14581 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14590 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14593 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15529 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15533 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15575 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15584 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15585 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15594 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15599 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 15603 of 2025**



With
R/SPECIAL CIVIL APPLICATION NO. 15968 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16009 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16012 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16014 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16015 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16068 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16070 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16327 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16331 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16405 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16533 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16598 of 2025

FOR APPROVAL AND SIGNATURE:

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

Approved for Reporting	Yes	No
	✓	

RADHA MADHAV ECO-INDUSTRIAL PARK
 Versus
 PRINCIPAL COMMISSIONER OF INCOME TAX & ANR.

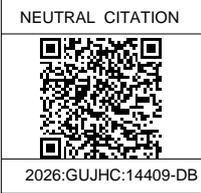
Appearance:
 MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1
 KARAN G SANGHANI(7945) for the Respondent(s) No. 1
 NOTICE SERVED for the Respondent(s) No. 2

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

Date : 18/02/2026

ORAL COMMON JUDGMENT

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



1. **RULE.** Learned Senior Standing Counsel Mr.Karan Sanghani waives service of notice of rule on behalf of the respondent - Department. Since a short question of law is raised in the writ petitions, the same are heard extensively and are finally decided today by this judgment and order.

2. The issue which calls for deliberation before this Court is in a narrow compass i.e. applicability of Section 96 of the Direct Tax Vivad Se Vishwas Scheme, 2024 promulgated vide Notification dated 19.09.2024 in exercise of powers conferred under sub-section (2) of Section 88 of the Finance (No. 2), Act 2024 issued by the Ministry of Finance read with the Circular No. 12 of 2024 dated 15.10.2024 and Circular No. 19 of 2024 dated 16.12.2024 in cases of the petitioners who are subjected to re-assessment under section 147/148 of the Income Tax Act, 1961 (for short "the Act") on the basis of incriminating material found during search under section 132/132A of the Act.

3. Special Civil Application No. 3627 of 2025 is taken up as the lead matter and therefore the facts are borrowed from it. In the instant writ petition, the petitioner is a Partnership Firm *inter alia* engaged in the business of development of Industrial Park in Karvad road. The petitioner filed its original return of income for Assessment Year 2013-14 on 11.07.2013 and subsequently filed the revised return of income on 21.11.2015 declaring total income at Rs.Nil. It is the case of the petitioner that the return of income was duly processed under Section 143(1) of the Act.

3.1. Subsequently, on an information received by the then Jurisdictional Assessing Officer (JAO), Vapi Circle, Vapi from DDIT (Investigation), Unit-1(3), Ahmedabad vide letter dated 30.09.2019, whereby a search under Section 132 of the Act was conducted on 11.09.2018 in the case of Jignesh Shah and Sanjay Shah of Ahmedabad, the assessment of the petitioner was re-opened. It is alleged that both Shri Jignesh Shah and Sanjay Shah were



engaged in providing accommodation entries in lieu of commission income through M/s. Mainak Comtrade Pvt. Ltd. It is the case of the Revenue that in the said commission of income, the petitioner was one of the beneficiaries and as such an amount of Rs.57,00,000/- which had allegedly escaped assessment. Therefore, based on this information, the case of the petitioner was selected for reassessment proceedings and notice under Section 148 of the Act was issued on 30.03.2021 along with reasons recorded for reopening the assessment were also issued.

3.2. During the reassessment proceedings, various notices were issued from time to time and in response to it, the petitioner had filed various replies along with the supporting documents. However, the JAO on 29.03.2022 passed an order under Section 147 of the Act determined the assessed income at Rs.57,00,000/- after making additions under Section 68 read with Section 115BBE of the Act and raised demand of Rs.36,63,504/-. Being aggrieved by the order dated 29.03.2022, the petitioner preferred an appeal before the CIT (Appeals), in Form No. 35 on 21.04.2022.

3.3. Subsequently, Direct Vivad Se Vishwas Scheme, 2024 (hereinafter referred to as "DTVSV Scheme") was enacted to provide resolution in respect of pending income tax litigation. Hence, Circular No. 12 of 2024 dated 15.10.2024 and Circular No. 19 of 2024 dated 16.12.2024 were issued and the DTVSV Scheme, came to be notified on 01.10.2024. It is the case of the petitioner that Section 96 of the DTVSV Scheme provides for certain cases, however the scheme will not apply in respect of tax arrears relating to an assessment year in which an assessment has been made under Section 143(3) or Section 144 or Section 147 or Section 153A or Section 153C of the Act on the basis of the search initiated under Section 132 or Section 132A of the Act. In the present case, the petitioner has opted the DTVSV Scheme and filled Form No. 1 on 20.12.2024. However, the application under the DTVSV Scheme was rejected on 17.01.2025 on the ground that since the order under Section 147 of the



Act was passed based on the information obtained during the search action conducted in case of Jignesh Shah and Sanjay Shah, the DTVSV Scheme is not applicable.

3.4. Aggrieved by the same, the petitioner also sent a communication dated 21.01.2025 requesting to reconsider the Form 1 as per circular dated 16.12.2024. However, in the present case the search action was conducted in the case of third party before 01.04.2021, but the assessment in the case of petitioner was completed under Section 147 of the Act, and therefore, the petitioner is entitled to opt for DTVSV Scheme.

4. The learned advocates appearing for the petitioners submitted that since no date of search is mentioned under the provision of Section 96 of the DTVSV Scheme, the search undertaken in cases of present petitioners prior to 01.04.2021 will not get encompassed under the said provision and hence they are also entitled to benefit of DTVSV Scheme, 2024. In this context reliance is also placed on Item No. 6 (clarification No. 6) of Circular dated 15.10.2024 and Item No. 40 (clarification no. 40) of Circular dated 16.12.2024.

5. At this stage, learned Senior Standing Counsel Mr. Karan Sanghani appearing for the respondents has submitted that the provision of Section 96 of the DTVSV scheme strictly barred the cases of the petitioners from consideration of the DTVSV Scheme and the circulars on which the reliance is placed will not come to the rescue of the petitioners since the same will not apply to them. It is submitted that the circular dated 15.10.2024, does not in any manner envisage that the assessee like the petitioners, against whom incriminating materials having been found would also be entitled for the benefit of the DTVSV Scheme. Similarly, while referring to the provision of circular dated 16.12.2024, it is urged that the same would not apply to the case of the petitioners and it is submitted that this Court may consider the provision of Section 96 of the

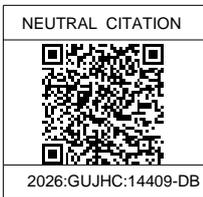


DTVSV Scheme instead of the clarificatory circular as the cases of the petitioner is clearly barred under the provision of Section 96 of the DTVSV Scheme. It is submitted that the circular does not imply that the case of the petitioner falls outside the category of search assessment excluded by the legislature under Section 96(a) (i) of the DTVSV Scheme.

6. Heard learned advocates appearing for the respective parties at length. In all the cases before us in the writ petitions, the assessment proceedings are reopened on the basis of incriminating material found during the search conducted on searched persons. In the lead matter the searched persons are Shri Jignesh Shah and Sanjay Shah, who were engaged in providing accommodation entries in lieu of commission income through M/s. Mainak Comtrade Pvt. Ltd. It is the case of the Revenue that in the said commission of income, the petitioner was one of the beneficiaries and as such an amount of Rs.57,00,000/- which had allegedly escaped assessment. It is the case of the petitioner firm that they are also entitled to avail the benefit of the DTVSV Scheme in view of the clarifications issued vide Circulars dated 15.10.2024 and 16.12.2024.

7. Learned advocates appearing for the respective parties have primarily placed reliance on the clarification issued by the Government of India through two Circulars clarifying the DTVSV Scheme. Reliance is placed on Item No. 6 (clarification No. 6) of Circular dated 15.10.2024 and Item No. 40 (clarification no. 40) of Circular dated 16.12.2024. The case of the petitioner is that the assessment orders passed in their case are under Section 148 of the Act and hence their cases neither falls under Sections 153A, 153C or 143(3) of the Act and as such, the benefits of DTVSV Scheme has to be extended to them.

8. As against this, it is the case of the Revenue that the reassessment proceedings emanate from the incriminating materials found during the search action under Section 132 of the Act, hence, in view of the specific



provision of Section 96A(1) of the Finance Act, 2024 (DTVSV Scheme) none of the petitioners are eligible for having the benefit of DTVSV Scheme. At this stage, we may refer to the relevant provision of Section 96 of the Finance Act, 2024 (DTVSV Scheme) :-

“96. The provisions of this Scheme shall not apply :

(a) in respect of tax arrear.-

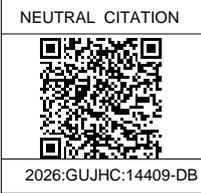
(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of Section 143 or Section 144 or Section 147 or Section 153A or Section 153C of the Income Tax Act on the basis of search initiated under Section 132 or Section 132A of the Income Tax Act.”

9. A plain and simple reading of the provision expounds that the provision of the DTVSV Scheme i.e. the entire scheme shall not apply in respect of the tax arrears which relates or emanates from an Assessment Order in respect of which assessment has been made under sub-section (3) of Section 143 of the Act or under Section 144 or Section 147 or Section 153A or Section 153C of the Act on the basis of the search initiated under Section 132 or Section 132A of the Act. It is an established fact from the pleadings and documentary evidence of the respective petitions that additions are made on the basis of the incriminating materials which were found during the course of search undertaken under Section 132 and Section 132A of the Act from the search persons connecting the present petitioner, and the assessment order has been passed under section 147 of the Act. Thus, there is no cavil of such proposition and the entire case of the petitioner hinges on the subsequent clarificatory circulars dated 15.10.2024 and 16.12.2024. The relevant clarifications of the circular dated 15.10.2024 on which reliance is placed by the petitioner is as under:-

“Search Assessments.

6 Kindly clarify which : Assessments framed under section 153A or assessments shall be 153C are clearly made on the basis of search considered to have been initiated under Section 132/132A. Therefore, made on the basis of such cases shall not be eligible for the search initiated under DTVSV Scheme, 2024. Section 132/132A of the Act?

For the other cases, where assessments have been made under Sections 143(3)/144/147,



following three sets of cases shall be considered as cases-where assessments have been made on the basis of search initiated under Section 132/132A.

These cases are :-

(i) Where a search is initiated under Section 132 or books of account, other documents or any other assets are requisitioned under Section 132A, on or after the 1st day of April, 2021, in the case of the assessee and assessments have been made consequently; or

(ii) Where the Assessing Officer has drawn satisfaction, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under Section 132 or Section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee and assessments have been made consequently, or

(iii) Where the Assessing Officer has drawn satisfaction, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under Section 132 or Section 132A, in case of any other person on or after the 1st day of April, 2021, pertains to, or any information contained therein, relate to, the assessee and assessments have been made consequently.”

10. We may first deal with the clarifications as mentioned in Item no. 6 of the circular dated 15.10.2024. A bare perusal of the clarification issued at Item no. 6 will elucidate that the question posed is about the kind/type of assessments which are to be considered having been made on the basis of the search initiated under Section 132/132A of the Act. Thus, the categories of the assessment emanating from the search under Sections 132/132A of the Act are sought to be clarified and correspondingly the circular clarifies that the assessment framed under Section 153A or Section 153C of the Act are clearly made on the basis of search initiated under Section 132/132A of the Act. Hence, such cases shall not be eligible



for the DTVSV Scheme. However, the petitioners have emphasized on the subsequent clarifications in paragraph 6(i) by contending that since in their cases search has been conducted prior to the cut-off date 01.04.2021, the provisions of Section 153A or Section 153 or Section 143(3), Section 144 or Section 147 will not apply. The submission does not merit acceptance for the simple reason that Item No. 6 only clarifies the types of the assessments which have to be considered on the basis of the search. The circular nowhere mentions that, if the search is conducted prior to 01.04.2021 under any of the provisions as mentioned in the clarification, the assessee will get the benefit of DTVSV Scheme. Hence, shelter sought by the petitioner under this clarification is futile and we are not inclined to direct the Revenue to grant the benefit of DTVSV Scheme to the petitioners only on the basis of the clarification at Item no. 6.

11. With regard to the clarification at item No. 40 of Circular dated 16.12.2024 is concerned, in order to appreciate the applicability of the same, we may refer to the same which is as under :-

“40 In case of a search action carried : No. Such cases are specifically barred out before 01.04.2021, under Section 96(a)(i) of the DTVSV assessments of previous years Scheme, 2024. other than search year, have been made under Section 153A or 153C of the Income Tax Act, 1961 (“the Act”), and assessment for the year of search has been made under section 143(3) of the Act. Whether any of these assessment order can be covered under the DTVSV Scheme, 2024?”

12. The clarification to the question/query at Item No. 40, the Circular emphatically says “No” since such cases are specifically barred under Section 96(a) (i) of the DTVSV Scheme. The petitioners have attempted to carve out a case by contending that since in their cases the assessment is under Section 147/148 of the Act and not in either of the Sections, and the clarifications at Item no. 40 refers to the assessment for the year of search



under Section 143(3) of the Act, therefore, the petitioner cannot be barred from having the benefit of DTVSV Scheme. In case, if we accept the submission, the same would run contrary to the provision of Section 96 of the DTVSV Scheme. As mentioned herein above, the legislature has clarified its affirmative intention of debarring those assesseees from the Scheme in whose case the 'tax arrears' relating to an assessment year in respect of which an assessment has been made under the Sections stem out from the search proceedings initiated under Section 132/132A of the Act. Merely, because there is no reference to provisions of section 147/148 of the Act in the question at Item no.40, the same will not *ipso facto* lead to a conclusion, that the assessment under section 147/148 of the Act, which is passed exclusively by analyzing the incriminating material found during the search, will deem to have been excluded. If the intention of the legislature was to exclude, then the same would have found place under section 96 or any other provisions of DTVSV Scheme.

13. Unquestionably, in the case of all the petitioners the re-assessment emanates from the incriminating materials found during search proceedings, and the reassessment order is passed under section 147 of the Act with respect of tax arrear. Hence, we cannot impose our wisdom in clarifying the provision of Section 96 of the DTVSV Scheme further, by holding that though the re-assessment is premised on incriminating material, the provision of Section 96 will not get attracted, and consequently, they are required to be treated as eligible under DTVSV Scheme.

14. With regard to the submission relating to the absence of particular cut-off-date of search mentioned in the provision of Section 96 of the DTVSV Scheme, we find that the clause (i) of Section 96 of DTVSV scheme specifically mentions relating to an assessment year in respect of which an assessment has been made, and hence this Court cannot incorporate something which is absent in the statute. As we have held that the



intention of the legislature is explicit to bar the benefit of the Scheme to those assessee's, against whom incriminating material is found during the search under section 132/132A of the Act, and the income is found to have escaped assessment resulting into tax arrears.

15. With the aforesaid observations, all the petitions stand ***dismissed***. Rule is discharged. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

phalguni/8 (Group)