



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

**R/SPECIAL CIVIL APPLICATION NO.16029 of 2025**

**With**

**R/SPECIAL CIVIL APPLICATION NO.16087 of 2025**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and**

**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Approved for Reporting	Yes	No
	✓	

**VASUNDHARA BUILDERS AND DEVELOPERS**

**Versus**

**THE PRINCIPAL COMMISSIONER OF INCOME TAX & ANR.**

**Appearance:**

**MR TUSHAR HEMANI, SENIOR ADVOCATE with MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1**

**KARAN G SANGHANI(7945) for the Respondent(s) No. 1,2**

**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and**

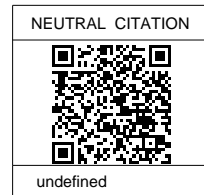
**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

**Date : 09/06/2026**

**COMMON ORAL JUDGMENT**

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

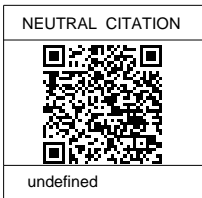
1. With consent, the matter is taken up for final hearing and final disposal.
2. With consent, Special Civil Application No. 16029 of 2025 is taken as lead matter.
3. The petitioner by way of the present writ petition challenges the action of the respondent in rejecting the declaration filed by the petitioner under the Direct Tax Vivad se Vishwas Scheme, 2024, (hereinafter referred to as "the Scheme") for the Assessment Year (for short, "AY") 2015-16 on 16.05.2025.

**BRIEF FACTS:**

3.1. Prior to the rejection of the declaration filed by the petitioner availing the benefit under the scheme, it appears that the petitioner was subjected to the reassessment by the department by resorting to the provision of Section 153(C) of the Income Tax Act, 1961, (for short, “the Act”) on the basis of the search proceedings conducted under Section 132 of the Act by the investigating wing on the Residential and Official premises of one Sadhani Brothers and also simultaneously a survey action under Section 133A of the Act was also carried out. It was alleged that the petitioner was beneficiary of the accommodation entries managed and maintained by the Sadhani Brothers and such allegations emanated from the incriminating material, i.e., the documents seized from the search and survey action against Sadhani Brothers.

3.2. It appears that thereafter, the petitioner objected to the proceedings under Section 153C of the Act and accordingly by the order dated 24.12.2019 passed by the respondent authority, the proceedings initiated under Section 153C of the Act were dropped. Subsequent thereto, it appears that for the AY in consideration, the assessment was reopened by the department by resorting to the provision of Section 147 of the Act. The petitioner objected to the reopening of the assessment under Section 147 of the Act which was disposed of by the respondent on 24.12.2021 rejecting such request of the petitioner to drop the proceedings. It appears that the petitioner filed an appeal against the order dated 24.02.2022 before the first appellate authority on 23.03.2022.

3.3. During the pendency of appeal, the Central government notified the Scheme vide Finance (Act No. 2), 2024 on 16.08.2024 with the objective of reducing pending income tax litigation benefiting the tax

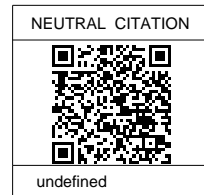


payers by providing them an opportunity to opt the benefit of such scheme in order to avoid the long drawn and vexatious litigation process. The Scheme provides exhaustive parameters which are to be fulfilled by the assessee in order to get the benefit. Accordingly, in order to avail the benefit of the scheme, the petitioner filed a declaration under the prescribed form (Form-1) on 31.12.2024 for settling his appeal before the First Appellate Authority, however, the same has been rejected on 16.05.2025 by the respondent by resorting to the provision of Section 96 of the Scheme. In view of the provision of Section 96 of the Scheme, the petitioner is debarred from having the benefit since he was subjected to search proceedings under Section 132 of the Act and the incriminating material and the documents which were seized from Sadhani Brothers during the search under Section 132 of the Act would be detrimental to availing the benefit of the scheme.

3.4. The petitioner, through its Chartered Accountant letter dated 22.05.2025 requested the respondent no. 1 to accept its Form-1 dated 31.12.2024 and to allow him to avail the benefit of the scheme, more particularly, in view of the fact that the proceedings under Section 153C of the Act were dropped which emanated from search under Section 132 of the Act. However, it appears that since no response was given, the petitioner is constrained to approach this Court by filing the present writ petition.

#### **SUBMISSIONS ON BEHALF OF PETITIONER**

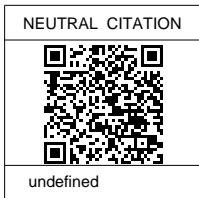
4. Learned Senior Advocate Mr. Tushar Hemani appearing for the petitioner, at the outset has submitted that the respondents have grossly misapplied the provision of Section 96(a)(i) of the Scheme (Finance Act No.2, 2024), in case of the petitioner, since the proceedings which emanated by resorting to the provision of Section 153C of the Act which has direct link with 'search' under the provision



of Section 132 of the Act has been dropped and instead, the department has resorted to invoke the provision of Section 147 of the Act based upon 'survey' material under Section 133A of the Act and since the provision of Section 132 of the Act would not apply, the petitioner cannot be restricted from availing the benefit of the scheme. Thus, it is urged that the impugned action of the respondent in rejecting the Form No. 1 dated 31.12.2024 may be quashed and set aside.

### **SUBMISSIONS ON BEHALF OF REVENUE**

5. Opposing the present writ petition and the aforesaid submissions, learned Senior Standing Counsel Mr. K. G. Sanghani, while referring to the contents of the affidavit-in-reply has submitted that the petitioner was subjected to the reopening of the assessment by resorting to the provision of Section 153C of the Act on the basis of search and survey action undertaken under Section 132 and 133A of the Act at the residential and office premises of Sadhani Brothers on 08.06.2017, and during the course of search and survey and on the basis of the incriminating material found during the search and survey, it was found that the petitioner was beneficiary of the accommodation entries. It is submitted that thus, there are serious allegations against the petitioner and during the course of such proceedings and on the basis of the statement recorded under Section 132(4) of the Act, the petitioner has admitted that he has earned an income of Rs. 25 lakhs out of such accommodation entries. Thus, it is submitted that in the present case, the survey under Section 133A of the Act is an independent or standalone proceeding but was integrally linked to the search operation conducted on the Sadhani Brothers and since the material gathered during the survey was examined and it directly points out the complexity of the present petitioner, his case for availing the benefit of the scheme gets debarred under the



provision of Section 96(a)(i) of the Scheme. Thus, it is urged that the writ petition may not be admitted.

### **OPINION AND CONCLUSION**

6. We have heard the learned advocates appearing for the respective parties at length. The facts which are established from the records and pleadings are as below:

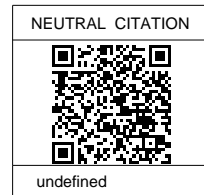
(a) A search under Section 132 of the Act and survey action under Section 133A of the Act was conducted at the residential as well as office premises of the Sadhani Brothers in which incriminating material connecting the present petitioner was found. It was alleged that the petitioner was beneficiary of the accommodation entries and accordingly, the proceedings under Section 153C of the Act were initiated.

(b) The petitioner objected the re-opening of the assessment under Section 153C of the Act and accordingly, by the order dated 24.12.2019 passed by the respondent authorities, the proceedings under Section 153C of the Act were dropped.

(c) Thereafter, the revenue by resorting to the provision of section 147 of the Act the assessment was re-opened vide assessment order dated 24.02.2022. The petitioner filed an appeal against the said order on 23.03.2022, which appears to be pending.

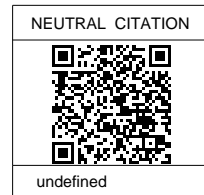
(d) During the pendency of the appeal, the petitioner filed Form-1 on 31.12.2024, for availing the benefit of the Scheme introduced vide Finance Act, 2024 on 16.08.2024.

(e) The Form-1 of the petitioner is rejected under the provision of Section 96 of the Scheme on 16.05.2025.



6.1. It is not in dispute that as per the statutory scheme of Section 153C of the Act, the proceedings of assessment emanate from the 'search' conducted under Section 132 of the Act whereas the Survey action finds place in Section 133A of the Act. After the proceedings under Section 153C of the Act were dropped which emanated from search action under Section 132 of the Act, the petitioner was called upon to face the proceedings while resorting to the provision of Section 147 of the Act. The reopening of the assessment was undertaken for the AY 2015-16 after dropping of the proceedings under Section 153C of the Act by the order dated 24.12.2019. The petitioner objected the reopening of the assessment under Section 147 of the Act by an order dated 24.12.2021. The request of the petitioner for reopening the assessment under Section 147 of the Act was rejected. A close scrutiny of the order dated 24.12.2021 would reveal that the respondent authorities at various places had categorically referred that the proceedings under Section 153C of the Act was dropped since the same were wrongly initiated under this provision on the basis of impounded materials found during the "survey action" whereas Section 153C of the Act provide that the same emanate from the searched persons and his search under Section 132 of the Act. The relevant observation as recorded in the impugned order dated 24.12.2021 is as under:

*"4.2.1 This objection is also not tenable as proceeding initiated u/s. 153C of the I.T. Act was wrongly initiated as notice u/s. 153C of the I.T. Act was issued on the basis of impounded materials during the survey action u/s 133A of the I.T. Act whereas notice u/s. 153C of the I.T. Act is to be issued on the basis of seized materials during the search action u/s. 132 of the I.T. Act. Hence, proceedings initiated u/s. 153C of the Act was dropped without verifying the details because of wrongly proceedings initiated u/s. 153C of the Act instead of proceeding u/s. 147 of the I.T. Act. Hence, now the AO has rightly initiated proceeding u/s. 147 of the I.T. Act by issuing notice u/s. 148 of the I.T. Act on 24.02.2021 after proper recording reasons and getting approval of competent*



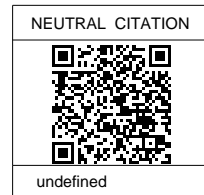
*authority.”*

6.2. Thus, the aforesaid reading of the observations of the order dated 24.12.2021 exposit that the proceedings under Section 153C of the Act were dropped since the same were initiated without verifying the details and instead, proceedings under Section 147 of the Act are initiated as they emanate from the impounding material during the “survey action” under Section 133A of the Act. The petitioner filed an appeal challenging the aforesaid order before the appellate authority on 23.03.2022. Subsequently, on 16.08.2024 by the Finance (No. 2) Act of 2024, the Central Government introduced the Scheme for those tax payers who would like to avoid the long drawn vexatious litigation process in those cases where the income tax litigation is pending. The petitioner accordingly filed a declaration under prescribed Form No. 1 on 31.12.2024 for settling his appeal in view of the scheme, however, the same has been rejected by the respondent by resorting to the provision of Section 96(a)(i) of the Scheme. The relevant section on which reliance is placed is incorporated as under:

*“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;”*

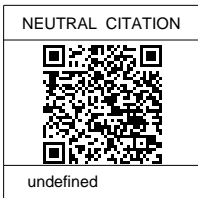
6.3. A bare perusal of the aforementioned provision of Section 96(a)(i) of the Scheme will clarify that the provisions of the Scheme do not apply in respect of the assessment which has been made under Sub-section 3 of Section 143 or Section 144 or Section 147 or Section 153A or Section 153C of the Act, “*on the basis of search initiated under Section 132 or Section 132A of the Act*”. Thus, a categorical



emphasis has been supplied under the provision of Section 96(a)(i) of the Scheme denying the benefit of the Scheme in respect of the assessments framed under the Sections emanating from the 'search' initiated under Section 132 or Section 132A of the Act.

6.4. In the present case, it is true that on the basis of the material which were impounded during the "search" under Section 132 of the Act and "survey action" under Section 133A of the Act and the petitioner was roped into the reassessment proceedings initially by resorting to provision of Section 153C of the Act, however, the proceedings initiated under Section 153C of the Act were dropped by the order dated 24.12.2019 and instead, the proceedings under Section 147 of the Act were invoked by categorically holding that the initial proceedings of 153C were wrongly initiated by considering it as "search" action under Section 132 instead of "survey action" under Section 133A of the Act. Thus, the department itself corrected its mistake by recording that the assessment is required to be undertaken on the basis of 'survey' under Section 133A of the Act instead of search proceedings under Section 132 of the Act.

6.5. At this stage, we may mention that the reference of Section 133A of the Act is missing in the provision of Section 96(a)(i) of the Scheme. There is no provision stipulated in the Scheme which debars an assessee from availing the benefits of the scheme in case the assessment is made under the provisions of Section 143(3) or Section 144 or Section 147 or Section 153A or Section 153C of the Act on the basis of "survey action" under Section 133A of the Act. Thus, in absence of any enabling provision restricting the claim of an assessee of availing the benefit of the scheme in case of the "survey action" under Section 133A of the Act, the respondent has fell in error and has acted illegally and arbitrarily in rejecting the declaration under the Form No. 1 of the petitioner dated 31.12.2024. The respondent



cannot integrate the proceedings of Section 153C emanating from Section 132 of the Act with the proceedings of Section 147 emanating from the “survey action” under Section 133A of the Act to deny the benefit of the scheme by resorting to the provision of Section 96(a)(i) of the Scheme. When the question/ issue of applicability of the Scheme arises, the same has to be strictly considered in light of the provisions of the Scheme, more particularly, when the assessment falls under the categories and contingency mentioned under Section 96(a)(i) of the Scheme. The Revenue cannot read restrictions into a statute that the legislature never intended to include. Had the legislature intended to exclude or restrict assessee subjected to a “survey action” under Section 133A of the Act, such a restriction would have been explicitly articulated in Section 96 of the Scheme. Furthermore, the rigours of a “search action” under Section 132/132A of the Act are significantly more severe for an assessee than those of a 'survey' under Section 133A; consequently, the two cannot be treated as legally equivalent in the absence of express statutory language.

7. Hence, the present writ petitions succeed and the impugned rejections dated 16.05.2025 rejecting the declaration of the petitioner under the Scheme for the A.Y. 2015-16 and A.Y. 2016-17 are hereby quashed and set aside. The respondent authority is directed to accept such declarations filed by the petitioner and issue the requisite statutory forms within a period of six weeks from the date of receipt of this order.

8. Accordingly, the present writ petitions stand ***allowed***.

**(A. S. SUPEHIA, J)**

**(VAIBHAVI D. NANAVATI, J)**

KUMKUM/39-40