



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15105 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
	✓	

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BIPINKUMAR GIRDHARLAL PAREKH

Versus

**OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 4(1)(1), AHMEDABAD**

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Appearance:

MR. JAIMIN R DAVE, MS. MANVI A. DAMLE with MR. YASH B. SIKKA for the Petitioner(s) No. 1

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

MR. AADITYA D BHATT(8580) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 15/06/2026

ORAL JUDGMENT

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

1. In the present writ-petition, the petitioner -assessee is assailing the order dated 19.05.2025 passed by the respondent under Section 148A(d) of the Income Tax Act, 1961 (for short ‘the



Act²), disposing of the objections raised by the petitioner. The consequential notice dated 23.05.2025 which was issued under Section 148 of the Act for the Assessment Year (for short A.Y.) 2021-22 is also challenged.

2. The brief facts are as below:

2.1. The petitioner is engaged in the business of transportation and has a business relationship with M/s. DCW Ltd., wherein, it hires trucks and offers it for transportation against freight amount agreed between the parties. The petitioner filed the return of income for A.Y. 2021-22 on 14.12.2021, declaring net total income of Rs.38,51,910/-. The return of income was processed under Section 143(1) of the Act.

2.2. It appears that, a search under the provision of Section 132 of the Act was undertaken against the group of M/s. DCW Ltd. on 18.11.2023. After the incriminating materials were collected during the search at M/s. DCW Ltd., the respondent issued a notice under Section 148A(1) of the Act on 31.03.2025 for reopening the assessment on the allegations referred therein and it was alleged that the income had escaped assessment.

2.3. The petitioner submitted his reply to the notice and clarified the income, citing total bills of Rs.6,68,95,812/- towards the freight and transportation income.



2.4. It is the case of the Revenue that the petitioner raised inflated bills for transportation expenses to the tune of Rs.32,71,205/-, and this income has escaped assessment.

2.5. The petitioner accordingly objected to such reopening, however, vide order dated 19.05.2025, the respondent passed an order under Section 148A(d) of the Act, disposing of the objections. Consequently, the notice under Section 148 of the Act for reopening of the assessment for A.Y. 2021-22 was issued, which is the subject matter of the challenge in the present petition.

3.1. Learned Advocate Mr. Jaimin Dave, appearing for the petitioner has submitted that the respondent has erroneously invoked the jurisdiction for reopening the assessment by issuing the impugned notice as well as the order. It is submitted that, there was no escapement of income as alleged in the impugned notice. While referring to the provision of Sections 147 and 151 of the Act, it is submitted that, since the search was conducted on or after 01.04.2021 but before 01.09.2024, such provision inserted prior to the amendment by the Finance (No. 2) Act, 2024 will be applicable, as envisaged under Section 152(3) of the Act, and hence, the respondent was required to obtain approval from the Principal Commissioner of Income Tax, which was not done. Moreover, it is submitted that, the reopening of the



assessment of A.Y. 2021-22 vide the impugned notice issued on 19.05.2025 under Section 148 of the Act is hit by the period of limitation as prescribed under Section 149 of the Finance (No. 1) Act, 2024, since it is beyond the period of three years, i.e. 31.03.2025, from the end of the relevant financial year, i.e. A.Y. 2021-22.

3.2. In support of his submissions, he has placed reliance on the judgment of this Court dated 23.02.2026 in Special Civil Application No. 9447 of 2023. Thus, it is urged that the impugned action of the respondent for reopening of the assessment be quashed.

4.1. Opposing the aforementioned submissions, the learned Senior Standing Counsel Mr. Aaditya Bhatt appearing for the Revenue has urged that the writ-petition may not be entertained at this stage and the petitioner may be allowed to face the assessment proceedings.

4.2. It is submitted that, after the incriminating material was found, during the search conducted at the M/s. DCW Ltd. group on 18.11.2023, it was noticed that an excess amount of 4% to 5% was paid to the transporters, which was withdrawn in cash and handed back to M/s. DCW employees, by inflating its transporting expenses. It is submitted that, the assessee admitted that the excess amount received from M/s. DCW Ltd. was



returned in cash to Shri Ajay Gupta, Senior Sales Manager of M/s. DCW Ltd., and this admission and the statement recorded during the search, will not fall within the expression of "incriminating material" and as the reopening is permissible under the provision of Section 148(1) of the Act and accordingly, the show cause notice was issued to the petitioner – assessee.

4.3. It is submitted that, the amended provision as per the Finance (No. 2) Act of 2024 would accordingly apply in the case of the petitioner, which permits the Revenue to issue notice under Section 148 of the Act, which was issued on 23.05.2025. It is contended that, this is not the case about M/s. DCW Ltd. claiming inflated expenditure, but it is about the petitioner - assessee receiving inflated payments, withdrawing such amounts in cash and returning unaccounted cash to M/s. DCW officials, which constitutes undisclosed transactions and unexplained expenditure at the hands of the assessee. It is thus submitted that, the *modus operandi* was that the assessee showed its transportation receipts to the tune of Rs.3,59,26,191.70/-, which is contrary to the evidence and such amount has been declared as freight income purportedly received from M/s. DCW Ltd. However, the corresponding expenses against this income are claimed without furnishing a single supporting document, establishing the genuineness of such expenses. Thus, it is submitted that, apart from the incriminating material seized from



the M/s. DCW group, the petitioner's own statement established that he received excess payments amounting to Rs.32,71,205/-, which has escaped assessment, and hence, the reopening may not be interfered with at this stage.

4.4. With regard to the issue of approval by the competent authority raised by the writ-petitioner, it is contended by learned Senior Standing Counsel Mr.Bhatt, that the order under Section 148A(3) of the Act and the notice issued under Section 148 of the Act cannot be set aside for want of approval from the competent authority, since such contention is legally misconceived and based on an erroneous reading of Section 152(3) of the Act and Section 151 of the Act. It is submitted that, the provision of Section 152(3) of the Act apply only where the reassessment proceedings themselves are initiated 'in consequence of', or 'on the basis of', a search initiated between 01.04.2021 and 01.09.2024 and since the assessee was not a search person, no search or requisition was ever carried out under Section 132 or 132A of the Act against the assessee, and hence, the provision of Section 152(3) of the Act would not apply. Thus, it is urged that the writ-petition may not be allowed.

5. We have heard the learned advocates appearing for the respective parties at length and also perused the documents, which are available on record.



6. The facts which are established from the pleadings and record are that, the petitioner who is in the business of transportation hires truck and offers it for transportation to M/s. DCW Ltd. group, against freight amount agreed between the parties. The petitioner filed return of income for A.Y. 2021-22 on 14.12.2021 declaring net total income of Rs.38,51,910/-. The ROI was processed under Section 143 (1) of the Act, it appears that on 18.11.2023, there was a search conducted under Section 132 of the Act against the M/s. DCW Ltd. and incriminating material was found during the search and accordingly the petitioner was also called upon to explain the bogus transactions and the generation of huge cash by giving bogus commission by issuing notice under Section 148A(1) of the Act on 31.03.2025. The petitioner accordingly submitted his reply on 15.04.2025, however, the objections were disposed of, by order dated 19.05.2025 passed under Section 148A(3) of the Act and accordingly a notice under Section 148(3) of the Act was issued on 23.05.2025.

7. A reading of the order under Section 148A(3) of the Act, reflects that the Assessing Officer has categorically recorded the details of the incriminating materials found during the search. It is recorded that the *“The hand-written sheets and other incriminating documents found and seized during search revealed the modus operandi of cash receipts and cash payments. It was*



found that the assessee has taken cash loans from various parties and distributors as per the requirements. The cash loans were adjusted against the non-genuine expenses incurred towards bogus commission / rebate over the period. In addition to the above, evidences of unaccounted scrap sale have also been found which were never reported by the company.”

8. It appears that, during the course of search proceedings, a statement of the petitioner was also recorded, which finds the part of the order and it is stated that the petitioner has admitted that excess payments made by the M/s. DCW Ltd. against the transportation charges are returned by him to Shri Ajay Gupta, Senior Sales Manager, M/s. DCW Ltd. Thus, unquestionably, the proceedings against the present petitioner of reopening the assessment is exclusively premised on the incriminating material found during the search undertaken under Section 132 of the Act. It is not in dispute that the search was carried-out on 18.11.2023 and accordingly, the assessment of A.Y. 2021-22 has been reopened by alleging that the amount of Rs.32,71,205/-, i.e. the income chargeable to tax has escaped assessment for financial year 2020-21.

9. Keeping in mind the aforesaid dates, we may now incorporate the provision of Section 152(3) of the Act, which reads as under:



“Section 152(3)

Where a search has been initiated under section 132 or requisition is made under section 132A or a survey is conducted under section 133A [other than under sub-section (2A)] on or after the 1st day of April, 2021 but before the 1st day of September, 2024, the provisions of section 147 to 151 shall apply as they stood immediately before the commencement of the Finance (No. 2) Act, 2024.”

Thus, since the date of search falls within the period from the 01.04.2021 to the 01.09.2024, the provision of Sections 147 to 151 of the Act, as they stood prior to the Finance Act (No. 2), 2024, shall apply.

10. Section 149 (Old regime) of the Act reads thus:

"Time limit for notice.

149. (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,

(ii) expenditure in respect of a transaction or in relation to an event or occasion, or

(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 1st 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 153-A, or Section 153-C read with Section 153-A, 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 132-A, on or before the 31st day of March, 2021."

11. In the present case, the provision of Section 149(1)(a) of the Act, which prescribes a time limit of three years, will get attracted, as the alleged escapement of income is below the amount of Rs.50 lakh, which finds place in the provision of Section 149(1)(b) of the Act. The relevant assessment year in the present case is A.Y. 2021-22, and hence, as per the provision of Section 149(1)(a) of the Act, the end of the relevant assessment year would be 31.03.2022. However, the impugned notice under Section 148 of the Act has been issued on 23.05.2025 for A.Y. 2021-22, which is beyond the limitation of three years, and hence, the reopening of the assessment runs contrary to the provision of Section 149 of the Finance (No. 1) Act, 2024, and hence is liable to be interfered with.



12. The contention raised before us by the Revenue, to the extent that the Finance (No. 2) Act of 2024 will apply in the present case, as there is no search conducted against the petitioner, is misconceived, since the reopening of the assessment against the petitioner is exclusively premised upon the incriminating materials found during the search under Section 132 of the Act. The provisions of Section 152(3) of the Act are not limited for undertaking the reassessment against searched person only, as projected before us by the Revenue, and not against other person, who is not subjected to search. The provision of Section 152(3) of the Act is applicable to all the assessee, where the reassessment proceedings are initiated, 'on the basis' or 'as a consequence' of a search conducted between 01.04.2021 and 01.09.2025, and against whom incriminating material is found. However, the re-opening of the assessment is subject to limitations as provided under Section 149 of the Act. As mentioned herein-above the provision of Section 132 of the Act finds place in the provision of Section 149 of the Act and hence, the reassessment, since it emanates on the incriminating material found during the search at M/s. DCW Ltd. group, connecting the present petitioner with such material, the provision of Section 149 of the Finance (No.1) Act prescribing limitation gets attracted. Thus, on this sole ground, the writ-



petition succeeds, and the impugned reopening of the assessment order dated 19.05.2025 and the impugned notice dated 23.05.2025 are hereby quashed and set aside. The writ-petition stands **allowed**.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

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