IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20401 of 2019
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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VIRENDRA NAGINBHAI PATEL (HUF)
Versus
THE INCOME TAX OFFICER WARD 1(2)(5)

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Appearance:
DARSHAN R PATEL(8486) for the Petitioner(s) No. 1
MR CHIRAG VIRANI for MR RUTVIJ R PATEL(10615) for Respondent No. 1

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

Date : 30/06/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Pursuant to the order dated 24.06.2026, learned advocate Mr. Chirag Virani on behalf of learned Senior Standing Counsel Mr. Rutvij Patel appearing for the respondent has tendered the Form for recording of reasons for initiation of proceedings under section 147 of the Income tax Act, 1961 (hereinafter referred to as "the Act") signed by the Principal CIT Vadodara (1). The same is ordered to be taken on record.

2. The present writ petition is filed by the petitioner seeking an order to quash and set aide the impugned notice dated 29.03.2019 under Section 148 of the Act along with the preliminary order dated 09.11.2019.

3. As recorded in the order dated 24.06.2026, on the earlier occasion the matter was fully argued and it was kept for taking

further instructions, whether the petitioner would like to withdraw the writ petition or not. Today, learned advocate Mr.Darshan Patel upon instructions has submitted that the petitioner would like to invite a reasoned order.

FACTS OF THE CASE

4. The petitioner is an HUF being regularly assessed to tax by the Income Tax Department at Vadodara. The petitioner filed the wealth tax return for the Assessment Year (AY) 2012-13, along with computation statement. The petitioner received a notice under Section 148 of the Act on 29.03.2019. The respondent issued a letter dated 07.05.2019 providing the reasons recorded for reopening of Assessment under Section 147 of the Act. The petitioner filed his objections to the reasons recorded for reopening the assessment for A.Y. 2012-13 on 09.05.2019. On 27.05.2019, the petitioner filed a letter addressed to the respondent requesting him to dispose of the objections. The respondent rejected the objections raised by the petitioner vide letter dated 09.11.2019. Hence, the present writ petition has been filed.

SUBMISSIONS OF THE PETITIONER

5. Learned advocate for the petitioner Mr. Darshan Patel has submitted that the respondent authority merely wants to carry out the exercise of verification by resorting to provision of Section 147/148 of the Act. It is submitted that the petitioner has fully and truly disclosed all material facts while filing the return of income under the Act as well as the Wealth Tax Act, 1957. However, the respondent-authority has contended that the petitioner failed to point out any particulars in his return of

income for the A.Y 2012-13 in respect of investments in purchase of the land at Vadodara. It is submitted that the rules for filing of income tax return do not provide for disclosure of investment i.e. purchase made, in the return of income. It is contended that the petitioner has not violated any rules while filing the income tax return for A.Y 2012-13.

5.1 It is submitted that the petitioner filed the income tax return under Form ITR-3, wherein there is no column or place to disclose the investments made by the petitioner for the relevant AY. It is submitted that petitioner had duly disclosed the transaction i.e. purchase of the land at Vadodara in the Wealth Tax return filed by the petitioner for the AY 2012-13. It is submitted that that the department was well aware about the purchase of the said land by the petitioner, on perusal of the Wealth Tax return which was available with the department. The petitioner respectfully submits that there was no statutory requirement to disclose the same in Form ITR-3, therefore, the exercise of reopening the assessment by the respondent authority is illegal due to absence of reasoned sanction under Section 151 of the Act, which is mandatory in nature.

5.2 Reliance is placed in the decision rendered by this Court in the cases of *India Gelatine and Chemicals Ltd. vs. Assistant Commissioner of Income-Tax(2)*, [2014] 52 taxmann.com 141 (Gujarat), and *Principal Commissioner of Income-tax-5 vs. Manzil Dineshkumar Shah*, [2018] 95 taxmann.com 46 (Gujarat).

SUBMISSIONS OF THE RESPONDENT

6. Learned Senior Standing Counsel appearing for the respondent department has submitted that the present petition

filed under Article 226 of the Constitution of India, challenging the notice dated 29.03.2019 issued under Section 148 of the Act, as well as the order dated 09.11.2019 disposing of the objections raised by the petitioner against the reopening, does not deserve to be entertained. It is submitted that the petitioner has failed to demonstrate any violation of a legal or statutory right capable of being enforced in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6.1 It is submitted that on the basis of the information available in the Individual Transaction Statement (ITS) on the ITD system, the Assessing Officer noticed that the petitioner had made an investment of Rs.2,22,07,564/-, plus stamp duty, registration charges and other incidental expenses, towards the purchase of an immovable property. It is submitted that out of the aforesaid amount, a sum of Rs.1,02,07,564/- was paid in cash. It is submitted that neither the investment in the said property nor the source of the substantial cash payment was disclosed by the petitioner in the return of income for AY 2012-13.

6.2 On the basis of the aforesaid information, the Assessing Officer formed a belief that income chargeable to tax had escaped assessment on account of the undisclosed investment in the immovable property. Accordingly, after recording detailed reasons, the Assessing Officer issued the notice dated 29.03.2019 under Section 148 of the Act. It is further submitted that, upon receipt of the notice, the petitioner filed objections to the reopening, which came to be disposed of by a detailed and reasoned order dated 09.11.2019.

6.3 It is further submitted that the return of income filed by the petitioner for the relevant assessment year was not subjected to scrutiny and had merely been processed under Section 143(1) of the Act. It is submitted that, upon comparing the investment made by the petitioner with the income disclosed in the return, the Assessing Officer found that the petitioner had disclosed income viz. Rs.5,30,090/-, whereas the investment in the property purchased amounting to Rs.2,22,07,564/-, along with stamp duty, registration charges and copying charges was believed to have escaped assessment for A.Y 2012-13. Therefore, the Assessing Officer has rightly formed the belief that income chargeable to tax had escaped assessment.

6.4 It is further submitted that disclosure of purchase transaction in wealth tax return by the petitioner does not amount to disclosure of transaction/income for the purpose of assessment under the income tax. Hence, the reassessment proceedings have been initiated not merely on account of the investment in the immovable property but also on account of the petitioner's failure to explain the source of the cash payment exceeding Rs.1.02 crores made towards purchase of the said land.

6.5 It is further submitted that at the stage of issuance of Notice under Section 148 of the Act, the Assessing Officer is only required to form a *prima facie* belief that income chargeable to tax has escaped assessment pursuant to the impugned notice and they are premature at this stage. Further, the Assessing Officer is not expected to arrive at a final conclusion on the merits of the case. In support of the aforesaid submission, reliance has been placed on the judgment of the Supreme Court in the case of _Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers (P) Ltd_., 291 ITR 500 (SC).

6.6 It is further submitted that looking at the return filed by the assessee with respect to AY 2012-13 and earlier years, it was found that the investment made in property is far away from the income disclosed. In the present case, the assessee had paid Rs.1,02,07,564/- in cash for purchase of the property in dispute. Therefore, the reassessment proceedings to verify the genuineness and source of the investment are necessary. Therefore, the impugned notice cannot be said to be arbitrary, illegal or without jurisdiction.

7. Reliance is also placed on the decision of this Court in the case of _Hemjay Construction Co(P.)Ltd. vs. Income Tax Officer,_ (2019) 419 ITR 39.

8. It is further asserted that since the Notice under Section 148 of the Act was issued after four years from the end of the relevant assessment year, the requisite sanction under Section 151 of the Act was duly obtained from the Principal Commissioner of Income Tax, Vadodara-I, vide communication dated 27.03.2019, after due satisfaction was recorded on the reasons made by the Assessing Officer. It is, therefore, submitted that Explanation 2(b) to Section 147 of the Act, squarely applies to the facts of the present case, as the Assessment Year under consideration is deemed to be an undisclosed income in other words, an income chargeable to tax had escaped assessment on account of an unrecorded investment in the purchase of an immovable property.

ANALYSIS AND OPINION

9. We have heard learned advocates appearing for the respective parties at length.

10. The facts of the case are not in dispute and are established on record is that the petitioner filed his return for income for AY 2012-13. The petitioner is *karta* of the HUF who filed wealth tax return for the same assessment year along with computational statement. Thereafter the petitioner has received notice under Section 148 of the Act on 29.03.2019. A letter dated 07.05.2019 providing the reasons for reassessment under section 147 of the Act was also supplied. The petitioner filed objections to the reasons recorded for reassessment for AY 2012-13 on 09.05.2019. Ultimately, by the order dated 09.11.2019, the objections raised by the petitioner has been rejected, hence, the present writ petition has been filed.

10.1 It is the case of the petitioner, that the petitioner has truly and fully disclosed all material facts while filing the return of income under the Act as well as in the wealth tax and at no point of time his return of income for AY 2012-13 was doubted. It is also contended that since there was no provision to disclose the transaction in ITR-3, it is disclosed in the Wealth Tax and hence, it cannot be said that there has been escapement of income. At this stage we may mention that the return of income filed by the petitioner was not taken under scrutiny, no assessment order under section 143(3) of the Act was passed but the same was only processed under section 143(1) of the Act.

10.2 The Assessing Officer while examining the return and the purchase value of the property in dispute found that the income disclosed in the return of income was Rs.5,20,090/-, whereas the purchase value of the property was amounting to Rs.2,22,07,564/- plus stamp duty and registration fee. The reopening is premised that the petitioner failed to disclose the income of Rs. 2 crores relating to investment of land with respect of unexplained source of cash payment of more than Rs.1.02 crores for purchase of land. It is not in dispute that the petitioner has paid Rs.1,02,07,564/- for purchase of the property in dispute. Hence, after such facts were noticed by the Assessing Officer, a Sanction under Section 151 of the Act was also taken from the Principal CIT Vadodara, vide communication dated 27.05.2019 for issuance of Notice under Section 148 of the Act. In order to verify that whether the Principal CIT has actually given accordance action the form recording reasons has been forwarded to us and the same is taken on record.

11. At this stage, we may refer to the provision of Section 147 of the Act which reads thus : -

> *"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of Section 148 to 153, assesss or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this Section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this Section and in Sections 148 to 153 referred to as the relevant assessment year):"*
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> ****
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> *"Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :*
> *(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the*

> *Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;"*

12. Upon examination of the facts we find that the provision of Explanation-2 to Clause (b) of Section 147 of the Act is applicable to the facts of the case. As for the assessment year under consideration, we find that there appears undisclosed income in purchase of immovable property. It is not in dispute that the reassessment is within six years from the relevant assessment year. In our opinion, the re-assessment cannot be scuttled at this stage on the ground that the petitioner had disclosed the transaction in wealth tax. The petitioner has made payment of Rs.1,02,07,564/- in cash. No explanation has been tendered in form of ledger account, cash book of Everest Construction in which the petitioner's family is a partner.

13. In a recent decision the Supreme court in the case of Sanand Properties P. Ltd. vs. Jt.Commr.Of I.T.Range 6 & Ors., 2026 INSC 472 ,while examing the provision of Section 147 of the Act has held thus:

> *"60. Upon a bare reading of Section147 of the IT Act, it is seen that the provision empowers the Assessing Officer to assess income that escaped assessment in the relevant assessment year. Subject to the provisions and safeguards in the section, the Assessing Officer can reassess income for an assessment year irrespective of whether the original assessment was merely processed under Section 143(1) or assessed under Section 143(3) of the Act. The power to reopen assessment is not confined to cases where the assessee has concealed his income; it also extends to cases where though there has been no concealment by the assessee, the Assessing Officer has reason to believe, in consequence of tangible material in his possession, that income has escaped assessment. The expression "escaped*

> *assessment" is not restricted to those cases only which have not come to the notice of the Assessing Officer at all, but also applies to those cases where an assessment has been made but (i) income chargeable to tax has been under-assessed, or (ii) such income has been assessed at too low a rate, or (iii) such income has been made the subject of excessive relief under this Act, (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."*

14. Thus, the material and facts the present case suggests that the Assessing Officer has not fell in error in re-opening the assessment. The Assessing Officer is not deemed to have noticed the facts disclosed in a wealth tax return, and the onus lies on the petitioner-assessee to disclose all material facts such as the source of funds and the true nature of the transaction its return of income. Thus, in the present case, the ingredients of Section 147 of the Act get fulfilled, and the re-assessment cannot be closed at this stage in light of the aforesaid facts. We have also noticed that the Principal CIT Vadodara, granting approval for issuance of Notice under Section 148 of the Act has also recorded satisfaction on the reasons recorded by the Assessing Officer, and it is opined that "*In view of the material placed on record as per AO's report, the case is found fit for issue of notice u/s 148*". In our opinion this is sufficient compliance of the provisions of section 151 of the Act.

15. In view of the foregoing analyses, the writ petition fails, the same is **rejected**.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

Radhika/3