Reserved On : 16/09/2026
Pronounced On : 24/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8681 of 2026

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-.

and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-.

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Approved for Reporting	Yes	No
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DILAVARSINH HARISINH ZALA
Versus
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL CIRCLE AHMEDABAD & ORS.

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Appearance:
MR.JAIMIN R DAVE(7022) for the Petitioner(s) No. 1
MS.MANVI A DAMLE(10805) for the Petitioner(s) No. 1
PRIYANK S DAVE(9465) for the Petitioner(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1,2
MS.MAITHILI D MEHTA(3206) for the Respondent(s) No. 3

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

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

(1) By way of the present writ petition, filed under Article 226 of the Constitution of India, the petitioner challenges the action of the respondent authorities in withholding cash amounting to Rs.5,68,37,500/. According to the petitioner, the retaining of asset-cash is in contravention of the provision of Section 132B of the Income Tax Act, 1961 (for short "the IT Act"), hence he is seeking direction for release.

BRIEF FACTS OF THE CASE :

(2) On 09.05.2024, the Income Tax Department received information from the Additional Director General (Crime), Gandhinagar, regarding

the discovery of cash amounting to Rs.5,68,37,500/- at the premises of the Angadiya firm operating under the name and style of “M/s.Prime Enterprise,” situated at 114, Iscon Arcade, opposite Parishima Building, Navrangpura, Ahmedabad. Pursuant thereto, the Income Tax Department conducted an inquiry in exercise of its powers under Section 131 of the IT Act. Subsequently, on 10.05.2024, a warrant of authorisation was issued under Section 132 of the IT Act, pursuant to which the aforesaid cash was seized.

(2.1) Thereafter, proceedings were initiated under the provisions of the Prohibition of Benami Property Transactions Act, 1988 (for short “the Benami Act”). In the course of the said proceedings, various notices were issued to the Angadiya firm viz. M/s.Prime Enterprise. Eventually, a show-cause notice under Section 24(1) of the Benami Act was issued on 12.08.2025.

(2.2) It is the case of the petitioner that during the proceedings under the Benami Act, the petitioner’s ownership of the cash amounting to Rs.5,68,37,500/- was established. Consequently, the proceedings initiated under the said Act were dropped by order dated 30.12.2025.

(2.3) In view of the aforesaid developments, the petitioner submitted an application dated 28.01.2026 under Section 132B of the IT Act, seeking release of the cash seized on 10.05.2024. The petitioner thereafter submitted a reminder dated 01.04.2026. In view of inaction of the respondent, the petitioner has filed the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

(3) Learned advocate Mr.Jaimin Dave appearing for the petitioner has submitted that the action of the respondent authorities in withholding the seized cash amounting to Rs.5,68,37,500/-, is arbitrary, illegal, high-

handed and without jurisdiction. It was contended that the continued retention of the said amount, in the absence of lawful authority, violates the petitioner's fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India.

(3.1) While referring to the provision of Section 132B of the IT Act, it is submitted that the statutory scheme contemplates the following:

(a) The seized cash may be adjusted towards any existing liability under the IT Act or any other law specified under the relevant statutory provision.

(b) The seized cash may also be appropriated towards the liability determined upon completion of the assessment, reassessment or recomputation for the assessment year relevant to the previous year in which the search was initiated, where the concerned person is in default or is deemed to be in default.

(c) After making the permissible adjustments towards the existing and subsequently determined liabilities, the remaining seized cash is required to be released within the statutory period of 120 days from the date of authorisation of the search.

(3.2) It is further submitted that, in the present case, the petitioner has no existing liability under the IT Act or any other applicable statute. Moreover, the respondent authorities have neither initiated nor completed any assessment or reassessment proceedings concerning the assessment year relevant to the previous year in which the search was conducted. Consequently, no liability has been determined against the petitioner, nor has the petitioner been declared an assessee in default, hence it is urged that the respondents may be directed to release the asset.

(3.3) Further, it is submitted that the statutory period of 120 days from the date of authorisation of the search expired on 07.09.2024, hence the continued retention of the seized cash beyond the said period is illegal and without jurisdiction. In support of the aforesaid submissions, reliance was placed upon the decision of this Court in the case of *Nadim Dilip Bhai Panjvani vs Income Tax Officer, Ward.3*, *[2016] 66 taxmann.com 124 (Gujarat)* relied upon in the case of *Ashish Jayantilal Sanghavi vs. Income Tax Officer, [2022] 139 taxmann.com 126 (Gujarat)*.

(3.4) It is contended that, during the proceedings initiated under the Benami Act, the petitioner's ownership of the seized cash amounting to Rs.5,68,37,500/- was established. Consequently, the proceedings under the said Act were dropped by order dated 30.12.2025. It was therefore contended that the said order constitutes a material subsequent development supporting the petitioner's claim to the seized cash, and that the amount ought to be released in favour of the petitioner, more particularly, as on today the no assessment proceedings are initiated against the petitioner.

(3.5) Finally, it is contended that M/s.Prime Enterprise, the Angadiya firm from whose premises the cash was seized on 10.05.2024, has no objection to the release of the seized cash in favour of the petitioner. In view of the aforesaid circumstances, it was urged that the respondent authorities be directed to release the seized cash and that the present petition be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

(4) Upon issuance of notice by this Court, respondent Nos.1 and 2 filed an affidavit-in-reply. Learned Senior Standing Counsel appearing

for the respondent authorities submitted that a warrant of authorisation dated 10.05.2024 was issued under Section 132 of the IT Act in respect of M/s.Prime Enterprises (PAN ABCFP5230G), and it was duly executed upon Shri Thakor Darshan Ashokbhai, an employee of M/s.Prime Enterprises, in his statement recorded under Section 132(4) of the IT Act, he has expressed his inability to explain the source of the cash found at the premises of M/s.Prime Enterprises.

(4.1) It was further submitted that Sections 132(4A) and 292C of the IT Act provide for a statutory presumption that a person in whose possession or control any money, bullion, jewellery or other valuable article is found, is considered the owner thereof. According to the respondents, the onus of rebutting such presumption rests upon the person concerned, namely, M/s.Prime Enterprises in the present case.

(4.2) Learned Senior Standing Counsel for the respondents submitted that assessment proceedings in the case of M/s.Prime Enterprises for Assessment Year (A.Y.) 2025–26 are pending before respondent No.2. It was submitted that M/s.Prime Enterprises is an Angadiya (courier) service provider based in Ahmedabad and that such service providers traditionally facilitate cash transfers through their various franchises operating across the State, in consideration of a commission.

(4.3) It was further submitted that the cash amounting to Rs.5,68,37,500/- was seized from the premises of M/s.Prime Enterprises on 10.05.2024, corresponding to Financial Year (F.Y.) 2024–25 and A.Y. 2025–26. The last date for filing the return of income for the said assessment year, in the case of firms, was 10.10.2025. However, M/s.Prime Enterprises filed its return of income belatedly under Section

139(4) of the IT Act on 24.12.2025, vide acknowledgment No.948025290241225.

(4.4) It is contended that it remains a matter of investigation whether the cash found at the premises of M/s.Prime Enterprises on 10.05.2024 belongs to Shri Dilavarsinh Harisinh Zala, proprietor of Jay Maa Bhavani Traders. With regard to the petitioner's reliance upon the order dated 30.12.2025 passed under Section 24(4)(b)(ii) of the Benami Act, it was submitted that the Deputy Commissioner of Income Tax, Benami Prohibition Unit, Ahmedabad, and the Initiating Officer, Ahmedabad, had forwarded the information gathered during the proceedings under the Benami Act to respondent No. 2 vide letter dated 07.01.2026. It was contended that the order dated 30.12.2025 does not record any conclusive finding regarding the ownership of the seized cash.

(4.5) It is submitted that, prima facie, the departmental database indicates that the petitioner, Shri Dilavarsinh Harisinh Zala (PAN ACPPZ1649F), had filed only two income-tax returns, namely, for A.Ys 2024-25 and 2025-26, and on perusal of the same cash amounting to Rs.5,68,37,500/- does not appear to be commensurate with his disclosed sources of income.

(4.6) It is submitted that the summons under Section 131 of the IT Act were issued to the partners of M/s.Prime Enterprises, viz. Shri Nirav Rasikbhai Thakkar, Shri Niravkumar Chandulal Thakkar and Shri Pravinkumar Ganeshbhai Thakkar, requiring their appearance on 27.07.2026. However, none of the partners appeared in response to the summons. It was further submitted that a notice under Section 133(6) of the IT Act was issued to Shri Dilavarsinh Harisinh Zala, proprietor of

M/s.Jay Maa Bhavani Traders and the petitioner herein, requiring compliance on 27.07.2026. The petitioner also failed to respond to the said notice. According to the respondents, no response had been received from either M/s.Prime Enterprises or the petitioner as on the date of filing the affidavit-in-reply.

(4.7) With regard to the petitioner, Shri Dilavarsinh Harisinh Zala, learned advocate for the respondents submitted that his PAN presently falls within the jurisdiction of the Income Tax Officer, Ward-1, Himmatnagar. It was further submitted that the proposal for centralisation of the petitioner’s case had been approved by the Directorate General of Income Tax (DGIT) (Investigation), Ahmedabad, and that the Department was in the process of migrating the petitioner’s PAN to the concerned office to facilitate coordinated investigation.

(4.8) It is submitted that, although the petitioner had furnished his PAN and personal identification details, he was a third party to the search proceedings, which were conducted in the case of M/s.Prime Enterprises (PAN: ABCFP5230G). It was contended that, while M/s.Prime Enterprises was the person from whose premises the cash was seized, the petitioner was merely a claimant or alleged beneficiary and not the recorded legal owner of the seized cash.

(4.9) It was further submitted that the petitioner had not produced any formal loan or deposit agreement with M/s.Prime Enterprises, bank statements evidencing the transfer of funds, contemporaneous written acknowledgments from M/s.Prime Enterprises, ledger entries in the books of either entity, independent third-party evidence or any other contemporaneous document predating the search. According to the respondents, the petitioner’s claim rests primarily upon oral statements, including the statement recorded during the proceedings under the Benami Act, that the cash had been kept with M/s.Prime Enterprises for safe custody. It was contended that such statements were unsupported by contemporaneous documentary evidence.

(4.10) It was further submitted that the Second Proviso to Section 132B(1)(i) of the IT Act, relating to the release of seized assets within the prescribed period of 120 days, would not apply to the petitioner, as he was a third party to the assessment proceedings.

(4.11) While referring to the provisions of Section 132B of the IT Act, it is contended that it does not contemplate the automatic release of seized cash merely because no quantified liability under the IT Act or the other statutes referred to therein exists at the relevant stage.

(4.12) It was further submitted that the proceedings under the Benami Act and the IT Act operate in distinct fields. While the Benami Act concerns the determination of ownership and the identification of the beneficial owner of the seized asset, proceedings under the IT Act involve examination of the nature and source of the cash. Learned Senior Standing Counsel for the respondents submitted that, in search proceedings under Section 132 of the IT Act, the statutory presumptions under Sections 132(4A) and 292C of the IT ACT require the Department to seek an explanation from the person in whose possession or control the asset was found.

(4.13) Finally, learned Senior Standing Counsel for the respondents submitted that the assertion that M/s.Prime Enterprises had no objection to the release of the seized cash in favour of the petitioner does not, by itself, establish the petitioner's ownership thereof. It was reiterated that M/s.Prime Enterprises was engaged in the Angadiya business, involving cash transfers to various destinations on a commission basis. Accordingly, it was contended that release of the seized cash at this stage would be premature, might prejudice the pending assessment proceedings and adversely affect the interests of the Revenue. On these grounds, it was urged that the present petition be dismissed.

ANALYSIS AND OBSERVATIONS

(5) The entire case of the petitioner hinges on the order dated 30.12.2025 passed under Section 24(4)(b)(ii) of the Benami Act dropping the proceedings. It is the case of the petitioner that, by the said order, the authority has conclusively held that the seized cash amounting to Rs.5,68,37,500/-, recovered on 10.05.2024 during the search and seizure proceedings conducted at the premises of M/s.Prime Enterprises, belongs to him and has accordingly dropped the proceedings under the Benami Act. The seized asset is required to be released under the provisions of Section 132 of the IT Act, whereas the respondents have contended that the asset cannot be released since the exclusive ownership of the petitioner has not been established, coupled with the fact of the pendency of assessment proceedings against M/s.Prime Enterprises and contemplated assessment proceedings against the petitioner.

(6) In order to ascertain the true purport and intent of the order dated 30.12.2025 passed by the Deputy Commissioner of Income Tax (Benami Prohibition Unit), the relevant observations from the said order are extracted below:

> *"4.3.3… … …*
> *In response to Q. No.15 to Q. No.18 in his statement, Shri Dilavarsinh Harisinh Zala, while explaining his modus operandi, further states that his*

proprietorship receives advances from traders for purchase of agricultural products. Such credits in his bank accounts are withdrawn in cash on regular occasions and deposited in safe custody with M/s.Prime Enterprise for making timely payments to farmers. As the need & demand arises, the payment is also being routed through M/s.Prime Enterprise. On being probed how the cash is transported to Ahmedabad from Sabarkantha, Shri Dilavarsinh Harisinh Zala stated that the cash, after it reaches some definitive amount, is being taken by himself to the office of M/s.Prime Enterprise for safe custody. Shri Dilavarsinh Harisinh Zala further stated that he would not be able to tell as to how much cash has been deposited at M/s.Prime Enterprise till date but at the given time of Search Action, Rs.5,68,37,500 was deposited with M/s.Prime Enterprise.
5. Conclusion:
5.1. Thus, in the instant case, the ownership of the cash is found to be established, and therefore the said cash is not to be considered as "Benami Property". Hence, the conditions of Section 2(9)(D) of the Act are not fulfilled. Accordingly, after considering all relevant materials, it is decided not to attach the property under section 24(4)(b)(ii) of the Prohibition of Benami Property Transactions Act, 1988.

In view of the above facts, the proceedings under PBPT Act in the above-mentioned case in respect of above-mentioned asset are hereby dropped, after getting approval from the Approving Authority on 30.12.2025."

(7) Thus, the authority acting under the Benami Act, has categorically concluded that "*the ownership of the case is "found to be established", hence the cash is not be considered as "Benami Property", hence "it is decided not to attach the property under Section 24(4)(b)(ii) of the Benami Property Transactions Act, 1988*". Finally, the proceeding under the Benami Act has been dropped. Thus, so far as the attachment of the property under the Benami Act and the ownership of the petitioner is concerned the same is conclusively established in his favour. Hence, we decline to accept the assertion made by the respondents that the ownership of the seized asset in the name of the petitioner is not established. However, the mere establishing of the ownership of the cash cannot dilute the proceedings initiated against M/s.Prime Enterprise from whose possession the cash has been found, and the release of cash cannot be ordered on this count.

(8) The petitioner filed an application for release of asset/cash on 28.01.2026, which is admittedly beyond the period of 30 days as contemplated in First Proviso to Section 132B(1)(i) of the IT Act. He filed a reminder letter on 01.04.2026. Since no decision was taken by the Respondent No.1, this Court directed the respondents to take appropriate instructions regarding release of cash. Accordingly, the respondent No.1 vide letter dated 31.07.2026 has informed the petitioner that his request for release of seized cash is not fit for consideration since the assessment proceedings are not completed. The petitioner is seeking release of assets primarily by placing reliance on further Proviso to Section 132B(1)(i) of the IT Act, which specifies the outer limit of 120 days to release of seized assets from the date on which the last authorizations for search under Section 132 or requisition under Section 132A of the IT Act. In this regard reliance is placed on the decision of this Court in the case of ***Nadim Dilip Bhai Panjvani (supra).***

(9) Upon seizure of the cash, it was deposited in the Public Deposit Account of the Principal Commissioner of Income Tax (Central), Ahmedabad, by Respondent No.1. The seizure pertains to F.Y. 2024-25, relevant to A.Y. 2025-26. The return of income filed by M/s.Prime Enterprises on 24.12.2025 has been selected for compulsory scrutiny, and the assessment proceedings are underway. The date for completion of the assessment proceedings for A.Y. 2025-26 is 31.03.2027. The petitioner was issued a notice under Section 133(6) of the IT Act to appear on 27.07.2026; however, he did not appear. The proposal for centralization of the petitioner's case has been approved by the DGIT (Inv.), Ahmedabad, and the Income Tax Authority is in the process of migrating

the PAN. Thus, the assessment proceedings in the case of the petitioner are under contemplation.

(10) In order to appreciate the issue raised in the present writ petition, it is necessary to examine the provisions of Section 132B of the IT Act. The Coordinate Bench of this Court in the case of ***Nadeem Dilip Bhai Panjvani (supra)***, after examining the provisions of Section 132B(1) of the IT Act, has held as under:

> ***"5*** *In this context, we may peruse the statutory provisions. Section 132B of the Act pertains to application of seized or requisitioned assets and reads as under:*
>
> *"[Application of seized or requisitioned assets:*
>
> *132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:"*
> *(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is [deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub section (1) of section 245C, may be recovered out of such assets]:*
>
> *[Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, to the person from whose custody the assets were seized:*
>
> *Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;*

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of [one-half per cent for every month or part of a month] on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment [under section 153A or] under Chapter XIV-B.

[Explanation 1]. "In this section"
(i) "block period" shall have the meaning assigned to it in clause (a) of section 158B;
(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in Explanation 2 to section 158BE.]
[Explanation 2. "For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.]"

6 *As per Section 1 of Section 132B of the Act, thus, the assets seized under Section 132 or requisitioned under Section 132A has to be dealt with in the manner provided in Clauses (i) to (iii) thereof. Principally, under Clause (i), it is provided that the amount of any existing liability under the Income Tax Act or the related fiscal statutes and the liability determined on completion of assessment under Section 153A and the assessment of the year relevant to the previous year, in which, search is initiated or requisition is made, or the amount of liability determined including the penalty and interest would be recovered out of such assets. Provisio to Clause (i) of Section 1 of Section 132B, however, provides that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month, in which, the asset was seized, for release of the asset and the nature and source of acquisition of any such assets is explained to the satisfaction of the Assessing Officer, the amount of existing liability referred to in the said clause may be recovered out of such asset and the remaining portion, if any, may be released to the person from whose custody the asset was seized, with the prior approval of the officer prescribed under the said proviso.*

7 Under Clause (i) of sub-section (1) of Section 132B, any seized assets would be adjusted towards the recoveries not only against existing but also liabilities which may crystallize on completion of the assessment under Section 153A and the assessment of the relevant year to the previous year, in which, the search is initiated or the request is made or in the block assessment proceedings. Such liabilities would not only include the principal tax but also interest and penalties, if any. However, under the first proviso to Clause (i) of sub section (1), if the person concerned makes an application within the prescribed time and also satisfies the Assessing Officer about the source of acquisition of such asset, the asset would be adjustable only against the existing liabilities. In other words, upon the concerned person applying to the Assessing Officer and satisfying him about the source of the acquisition of the asset, the same would be released after adjustment towards existing liabilities, without waiting for the outcome of the assessment proceedings under Section 153A of the Act or the assessment for the year relevant to the previous year, in which, the search was initiated or a requisition is made or for the block period referred to under Chapter XIV-B.

8 *Further proviso to Clause (i) of sub section (1) of Section 132B of the Act provides that such asset or any portion thereof, as is referred to in the first proviso shall be released within a period of 120 days from the date on which the last of the authorizations for search under Section 132 or for requisition under Section 132A, as the case may be, was executed. This further proviso, therefore, has to be viewed and interpreted in the background of the provisions contained in Clause (i) of sub section (1) of Section 132B of the Act and the first provisio to the said clause. The further proviso, thus, requires that such assets or portion thereof referred to in the first provisio would be released within the prescribed time. Of course when this further proviso refers to any portion of the asset, as is referred to in the first proviso, it necessarily permits the Assessing Officer to* *apply the assets against the existing liability or even when not satisfied about the source of acquisition of the asset to refuse to release the same till the further liabilities which may arise upon completion of the assessment under Section 153A of the Act or the assessment of the year relevant to the previous year, in which, the asset was seized etc. are completed. To this extent, we fully accept the stand of the counsel for the revenue that the further proviso would have to be read in continuation of the first proviso and therefore would not override the provision of the first proviso which requires the Assessing Officer to release the asset only upon being satisfied with the source of its acquisition. However, this further proviso puts a time limit, within which, such asset must be released. The question of not releasing the asset would arise only upon the decision on an application that may have been made by the person concerned is taken by the Assessing Officer. If no decision is taken, necessarily, the option of the Assessing Officer to adjust such seized asset would be confined to the existing liabilities. It is, in this context, in our opinion, the legislature required the Assessing Officer to follow the time limit scrupulously. In other words if the person concerned has made an application for release of the asset within the prescribed time, the authority can refuse such request on the ground of not being satisfied about the source of its acquisition. But if no such decision is taken within the time envisaged in the further proviso, releasing of the asset becomes imminent."*

(11) A close reading of the provision of section 132B of the IT Act more particularly, clause (i) of sub-section (1) of Section 132B of the IT Act, as discussed by this Court in the said judgment, exposit that the Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act requires that such seized assets or portion thereof referred to in the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act can be released within the prescribed time of 120 days, and the Assessing Officer can adjust the assets against the existing liability or even when not satisfied about the source of acquisition of the asset, he may refuse to release the same till the further liabilities which may arise upon completion of the assessment under Section 153A of the IT Act or the assessment of the year relevant to the previous year, in which the asset was seized. It is also held that the further Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act has to be read in continuation of

the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act and, therefore, would not override the provisions of the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act, which requires the Assessing Officer to release the asset only upon being satisfied with the source of its acquisition. It is also held that the application filed by the concerned person seeking release of the asset within the prescribed time i.e. 30 days, can be rejected on the ground of not being satisfied about the source of its acquisition, and if no such decision is taken within the time envisaged in further Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act i.e. 120 days, releasing of the seized asset becomes imminent.

(12) We may first deal with the objection taken by the Revenue that the provision of Section 132B of the IT Act will not apply to the petitioner since he is a third party and the assets cannot be released till the assessment proceeding against Prime Enterprise are in progress. We do not subscribe to the argument that the petitioner cannot apply release of assets since he is a third party, since such submissions runs contrary to the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act. The expression “person concerned” will include the person whose assets are seized during the search proceedings from another person. Section 132B of the IT Act will encompass any person, against whom liability of tax is established after determination of assessment proceedings. Thus, the petitioner is entitled to make an application for getting his assets released since he is encompassed within the contours of the provision of Section 132B of the IT Act however, in order to maintain the interest of the Revenue, in such type of cases, the Revenue can always seek an undertaking to the effect that in case the original assessee, who is

subjected to search and seizure stakes claim, the concerned person who is seeking release of his assets would indemnify the Department.

EFFECT OF FIRST AND SECOND PROVISO TO SECTION 132B(1)(i) OF THE INCOME TAX ACT

(13) Having held that the petitioner is entitled to make an application seeking release of seized assets, the issue which falls for further deliberation is that whether the assets can be released merely because he/she has filed an application under the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act. As per the First Proviso to Section 132B(1)(i) of the IT Act, the person concerned has to make an application within a period of thirty days from the end of month in which assets are seized. However, the quintessential feature is that the taxpayer has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. The recording of satisfaction by the Assessing Officer on the disclosure/explanation is mandatory for determination of existing liability and proportionate release of assets, and the remaining portion can be released with the prior approval of the authority mentioned therein. The existing liability is the tax liability which is already determined and not paid by the assessee, and it is not the liability which is yet to be determined. In the present case, unquestionably, the petitioner has not made an application for releasing of the seized asset within a period of 30 days. Moreover, he has not whispered about the nature and source of acquisition. Even if the taxpayer discloses the nature and source of acquisition of seized assets, unless the Assessing Officer records satisfaction on such disclosure, the assets cannot be released, merely on the ground that its ownership is established in any other proceedings under any other Statute. The expression "for

release of asset and the nature and source of acquisition of any such is explained" in the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act casts a statutory obligation to explain the nature and acquisition of the assets, and if the taxpayer does not explain source and nature of seized assets, and simply makes an application for release,, the Assessing officer is not supposed to intimate the taxpayer to explain the source and nature. The filing of an application for release is not an empty formality, and the taxpayer is required to disclose the nature and source of the asset. If he does not explain the Assessing officer is not supposed to act on such application. Thus, the cash-asset cannot be ordered to be releases in absence of any disclosure and satisfaction of Assessing Officer on such disclosure.

(14) The further Proviso (Second Proviso) to Section 132B(1)(i) of the IT Act stipulates period of 120 days for release of seized assets as referred in First Proviso from the date of which the last of authorizations for search under Section 132 or for requisition under Section 132A of the IT Act was executed. Clause (ii) and (iii) directly link the Second Proviso with sub-section (1) of Section 132B of the IT Act. Sub-section(1) to Section 132B of the IT Act uses the expression "completion of assessment" twice i.e., *a)* under Section 153A of the IT Act and, *b)* under Chapter-XIV-B for determination of liability of tax amount. Thus, the completion of assessment proceedings and the adjustment of such assets to liabilities is mandatory, which depends on determination of nature and source of income of the seized assets in the assessment proceedings. Clause (ii) to sub-section (1) of Section 132B of the IT Act empowers the Assessing Officer to discharge an assessee of liability as referred in Clause(i) of Section 132B(1) of the IT Act to the extent money so

applied, and Clause (iii) refers to assets other than money to be applied for discharge of liability by sale of such assets, and the assets remain to be under distraint-seizure.

(15) The satisfaction to be recorded by the Assessing Officer in the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act is on the explanation/disclosure including its source tendered by the concerned person, who is seeking release of assets by filing an application within a period of 30 days, whereas in the Second Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act the satisfaction on the source of acquisition and the discharge of liability is determined on completion of assessment proceedings as mentioned in Clause (i) to sub-section (1) of Section 132B of the IT Act. In either of the Proviso, the satisfaction of the Assessing Officer determining the source of seized assets is compulsory and cannot be diluted. The reading of First Proviso refers to two eventualities; (i) the adjustment of amount of existing liability by the Assessing Officer, and (ii) the release of remaining portion of assets, after adjustment by the competent authority. The Second Proviso to Section 132B(1)(i) of the IT Act will only get triggered, if any decision is taken by Assessing officer on the application filed by the taxpayer within a period of 30 days as specified in the First Proviso determining the liability and adjustment made to the existing / past tax liability. In absence of any determination of source or nature of the seized assets, the release of assets cannot be automatic. In order to appreciate the release or continuous seizure of the asset beyond 120 days, it would be necessary to examine the consequences of such retention which find place under sub-sections (3) and (4) of Section 132 of the IT Act.

IMPACT OF SUB-SECTION(4) OF SECTION 132B OF THE IT ACT ON CLAUSE (I) OF SUB-SECTION (1) OF SECTION 132B OF THE INCOME TAX ACT:

(16) It is noticed by us that the Coordinate Bench of this Court in the case of ***Nadim Dilip Bhai Panjvani (supra)*** has not examined the operation and effect of Sub-section(4) of Section 132B of the IT Act on the retention of the seized assets, neither in the decision of *Mitaben R. Shah vs. Dy.CIT*, (2011) 331 ITR 424 (Guj), on which reliance is placed, it has been dealt with. Sub-section (4) of Section 132B of the IT Act reads thus:

> *"(4) (a) The Central Government shall pay simple interest at the rate of [one-half per cent for every month or part of a month] on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.*
>
> *(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment [under section 153A or] under Chapter XIV-B."*

(17) Section 132B(3) of the IT Act thereof provides that any asset or proceeds which remain after the liabilities are discharge shall be forthwith met over or paid to the person from whose custody the assets were seized, whereas sub-section (4) of Section 132 of the IT Act creates liability of the Central Government to pay interest. The provision of Section 132B(4) of the IT Act has two Clauses (a) and (b). Section 132B(4) of the IT Act outlines the statutory mechanism for the payment of interest by the Central Government on aggregate money seized or requisitioned during a search and seizure, as reduced by the amount of money, if any released

under the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act and also of proceeds of the assets sold towards the discharge of liability referred in Clause(i) of sub-section(1) of Section 132B of the IT Act. Clause(a) to sub-section (4) to Section 132B of the IT Act mandates the Government to pay interest on "the aggregate amount of money seized" as reduced by the amount of money, "if any" released under the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act. Thus, if no money is released under the First Proviso to Clause (i) to sub-section (1) of Section 132B of the IT Act, the aggregate amount, which was initially seized, will carry the prescribed interest. The Revenue is required to pay interest on excess amount after determination of tax liability on completion of the assessment proceedings as specified in Clause (i) to sub-section (1) of Section 132B of the IT Act or on the original seized amount in case no tax liability is incurred. In case, the portion of cash seized during the search or requisitioned under Section 132/132A of the IT Act, is returned to the taxpayer during the initial phases under the First Proviso to Section 132B(1) of the IT Act, the interest is to be paid on excess amount retained after determination of tax liability. Similarly, for the money realised in asset sale, proceed to adjust the tax liability.

(18) Clause (b) of sub-section(4) of Section 132B of the IT Act fixes the point of running of interest. The trigger for interest timeline begins on the day immediately following the expiry of 120 days from the date, on which the last search authorization was executed, and the end point, when the liability to grant interest ends, is on the date of completion of assessment or reassessment or recomputation under Section 153A (or Chapter XIV-B for block assessments) of the IT Act. The provisions of

Sub-section (4) of Section 132B of the IT Act oblige as a compensatory measure for taxpayers, whose liquidity is restricted beyond a reasonable time-frame, while acting as a financial check on the Income Tax Department to complete assessments promptly. Thus, the Revenue is saddled with liability of paying interest on the aggregate amount retained by it up to the date prior to the framing of the assessment or reassessment order.

(19) On a careful examination of the statutory framework of Section 132B of the IT Act, we find that the release of seized assets under Second Proviso to Clause(i) to Section 132B(1) of the IT Act on completion of 120 days is not routine or automatic, though it bears the expression “shall be released”. It is settled legal precedent that use of word “shall” in every statute does not mean that the intention of the legislature is its mandatory operation. The real intention of the legislature can be gathered from the overall reading and scope and realm of the statue, in which it is meant to operate and that when a statute uses the word "shall", *prima facie*, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute, and the principle of literal construction of the statute alone in all circumstances, without examining the context and scheme of the statute may not serve the purpose of the statute. (vide *C.Bright vs. District Collector and Ors.*, 2021 (2) S.C.C. 392 (Full Bench). Once the consequences of retaining the seized assets is prescribed, in our opinion, the release cannot be held to be mandatory, but would be directory. There may be cases, where the application filed by the taxpayer, as the present petitioner, under the First Proviso to Clause (i) of sub-section (1) of Section 132B of the IT Act is bereft of any explanation, he/she merely

asks for release, without disclosure of nature and source of acquisition, and the Assessing Officer does not decide such application, then in such cases, the automatic release of assets on completion of 120 days will do violence to the provisions of Section 132B of the IT Act. As previously held by us, the First Proviso casts a statutory obligation on the assesse to disclose the nature and source of acquisition of assets, and if the assessee fails to do so, the Assessing Officer is not supposed to call from him/her to explain. If the application is bereft of any explanation as required by the statute, the Assessing Officer is not supposed to take cognizance of the application. Thus, the automatic release of seized assets on completion of 120 days, as referred in the Second Proviso will frustrate the intention and purport of Section 132B of the IT Act. This facet of operation of the both the Provisos in light of the provisions of Section 132B(4) of the IT Act has not been examined by this Court in the aforesaid judgements.

(20) The entire case of the petitioner hinges on the order of the authority under the Benami Act. It is true that the authority in its order has held that the petitioner i.e. M/s.Prime Enterprise, which is an Angadiya firm, has deposited the amount and the cash of Rs.5,68,37,500/- belongs to the petitioner. However, the question remains that the source of such cash still remains to be examined. It is not in dispute that M/s.Prime Enterprise is subjected to the assessment proceedings, and the petitioner was also issued a notice of consolidation; however, neither anyone from M/s.Prime Enterprise appeared nor the petitioner appeared before the Assessing Officer. The assessment proceedings against M/s.Prime Enterprise are not yet concluded. A notice under Section 133(6) of the IT Act was issued to the petitioner fixing the compliance on 27.07.2026 however, the

petitioner also did not respond. The summons under Section 131 of the IT Act was issued to the partners of M/s.Prime Enterprise; however, all of them did not remain present before the Assessing Officer. So far as the petitioner is concerned, approval has been given by the Director General of Income Tax (Investigation), Ahmedabad. Accordingly, a proposal for the transfer of the PAN has been sent to the Principal Commissioner of Income Tax (1), Ahmedabad, as the case has been centralized with the Assessing Officer, Deputy Commissioner of Income Tax, Central Circle 1(4), Ahmedabad, and the assessment proceedings will be initiated against him for Assessment Year 2025-26.

(21) We are not inclined to accept the case of the petitioner in view of the foregoing discussion of the statutory framework, more particularly when the petitioner, in his application dated 28.01.2026, has not explained the nature and source of the cash, and the assessment proceedings are under contemplation. In view of the cryptic request made by the petitioner for release of the cash, the Assessing Officer was not expected to respond.

(22) We find that the decisions of this Court in the case of ***Nadim Dilip Bhai Panjvani (supra)*** and ***Mitaben R. Shah (supra)***, which were followed in the subsequent decision of this Court in the case of ***Ashish Jayantilal Sanghavi (supra)***, do not examine the effect of Section 132B(4) of the IT Act on clause (i) of Section 132B(1) and the provisos thereto. The decision in **Mitaben R. Shah (supra)** relies upon the decision rendered in the case of *Cowasjee Nusserwanji Dinshaw vs. ITO*, (1987) 165 ITR 702 (Guj.), which deals with the provisions of Section 132(8) of the IT Act, directing the retention of books of account and other documents beyond a period of 180 days, unless reasons for their

continued retention were recorded in writing with the approval of the Commissioner, and, in the absence thereof, the books of account were required to be released. In our considered opinion, the ratio of **Cowasjee Nusserwanji Dinshaw (supra)**, which was subsequently followed in other decisions, cannot be applied to the scheme of Section 132B of the IT Act. Instead of invoking the principle of *per incuriam*, we are of the opinion that the issues raised before us call for determination by a Larger Bench, since the view expressed in the aforesaid judgments has subsequently been followed..

(23) Under the provisions of Rules 5 and 6 of the Gujarat High Court Rules, 1993, the following questions are referred to the Larger Bench for determination :

(1) Whether the release of seized assets is mandatory upon completion of 120 days, as prescribed under the Second Proviso to Section 132B(1)(i) of the IT Act, where an application is filed under the First Proviso within a period of 30 days, by construing the expression "shall be released" as mandatory.

(2) Whether the seized assets can be released upon completion of 120 days in the absence of any determination of tax liabilities in the assessment proceedings, as contemplated under Clause (i) of Sub-section (1) of Section 132B of the IT Act, where no decision is taken by the Assessing Officer on an application filed under the First Proviso.

(3) Whether the Assessing Officer is required to take cognizance of an application filed by the taxpayer and intimate the taxpayer of

the rejection thereof, where such application is bereft of any disclosure regarding the nature and source of the assets, and whether non-intimation thereof would result in the automatic release of the assets upon completion of 120 days.

(24) The Registry is directed to obtain appropriate orders from the Hon'ble the Chief Justice.

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

Sd/- .
(VAIBHAVI D. NANAVATI, J)

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Bhavesh-[PPS] and NVMEWADA/1*