

Dignesh Pramukhlal Patel vs Assistant Commissioner Of Income Tax ... — R/Special Civil Application No. 8645 of 2022

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NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 8645 of 2022 FOR APPROVAL AND SIGNATURE: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and HONOURABLE MR. JUSTICE PRANAV TRIVEDI ===== Approved for
Reporting Yes No ✓ ===== DIGNESH PRAMUKHLAL PATEL Versus
ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 3(1)(1), AHMEDABAD
===== Appearance: MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1
AADITYA D BHATT(8580) for the Respondent(s) No. 1 =====
CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI Date : 10/03/2026 ORAL
JUDGMENT (PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Dhinal Shah for the petitioner and learned Senior Standing Counsel Mr. Aaditya Bhatt for the respondent.

2. Having regard to the controversy arising in this petition, which is in a narrow compass, with the consent of the learned advocates for the respective parties, the same is taken up for final hearing. Initially the present petition was admitted on the ground of the jurisdiction of the Assessing Officer and the Faceless Assessing Officer. However, this Court vide order dated 17.09.2025 had concluded the issue and thereafter had kept the present matter to be considered on merits separately. In wake of such factual aspect, the present petition is taken up for consideration on Page 1 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined merits

3. Present petition preferred under Article 226 of the Constitution of India assails the validity of order dated 07.04.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short) along with notice issued under Section 148 of the Act dated 07.04.2022 for the Assessment Year 2018-19 by the Income Tax Officer, Circle-3(1)(1), Ahmedabad (hereinafter referred to as the "respondent" for short).

4. The facts giving rise to the filing of the present writ petition are that the petitioner had filed its return of income on 27.07.2018 for the Assessment Year 2018-19 declaring total income of Rs. 27,26,64,000/-. It is the case of the petitioner that the assessment proceedings were initiated and the case of the petitioner was selected for scrutiny assessment under the provisions of Section 143(3) of the Act. 4.1 Pursuant to the initiation of the proceedings, notice under Section 142(1) of the Act was issued for determining the taxable capital gain, more particularly on sale of shares. The petitioner responded to the said notices on various dates by giving complete particulars about the sale of shares and resultant capital gain working including the claim under Section 54F of the Act. 4.2. It is the case of the petitioner that based on the submissions made by the petitioner, the respondent was satisfied with the information and details furnished by the petitioner and on the basis of that, the order under Section 143(3) of the Act was passed by the concerned Assessing Officer on 12.03.2021. Thereafter, the respondent by way of notice dated 21.03.2022 issued under Section 148A of the Act initiated reassessment proceedings. The income of the petitioner was proposed to be reassess on the ground that there is a change in the control due to change in the Page 2 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined directors of the Company of which the shares were sold by the petitioner and therefore the capital gain income should have been treated as business income and thereby there is escapement of income. The petitioner filed response to the notice by way of reply dated 28.03.2022 giving details of the capital gain and also the reasons as to why the notice dated 21.03.2022 was not correct. It is the case of the petitioner that despite categorical contention raised by the petitioner in the reply, the respondent passed an order dated 07.04.2022 under Section 148A(d) of the Act along with notice under Section 148 of the Act of the same date which are impugned in the present writ petition.

5. Learned advocate Mr. Dhinal Shah for the petitioner has submitted that this is a case of change of opinion. It was submitted that the issues which are stated in the reassessment proceedings were part of the assessment proceedings. It was further submitted that the impugned order under Section 148A(d) of the Act dated 07.04.2022 and notice under Section 148 of the Act of the same date are wholly perverse and the same are required to be quashed in limine. It is further submitted that the petitioner was subjected to scrutiny under Section 143(3) of the Act and thereby the respondent was available with complete authority to make appropriate enquiries into the return of income filed by the petitioner. 5.1. It is further submitted that the respondent even made requisite enquiries vide notices dated 22.09.2019, 24.11.2022, 25.01.2021 for computation of correct capital gain in relation to sale of shares and claim under Section 54F of the Act. It was further submitted that the petitioner vide reply dated 09.02.2021, 18.02.2021 and 05.03.2021 duly satisfied the anxieties of the respondent with regard to the computation of capital gain in relation to the sale of shares. Lastly, it is submitted that the construction of Section 147 of the Act read with Section 148 of the Act clearly emphasizes upon sanctification of the conditions for initiation of the Page 3 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined proceedings. 5.2. It is therefore submitted that in the present case the information in relation to the sale of shares and computation of capital gain was already in possession of the Assessing Officer and the same was already examined during the course of scrutiny assessment proceedings. Therefore, the issuance of the impugned notices was not premised upon any new information flagged in the system but merely an attempt to review the information which was already on record and examined during the scrutiny assessment proceedings. Therefore, according to learned advocate Mr. Dhinal Shah, this is a case pertaining to clear issue of change of opinion. In wake of such submissions, learned advocate Mr. Shah requested to grant the prayers made in the writ petition.

6. Per contra, learned Senior Standing Counsel Mr. Aaditya Bhatt for the respondent has submitted that in the present case the information has been flagged on the Insight Portal under the category of 'High risk CRUI/VRU cases' for the Financial Year 2017-18. The information flagged on the Insight Portal was in accordance with the risk management strategy formulated by the Board and the same falls under the definition of clause (i) to Explanation 1 to Section 148 of the Act which became effective on 01.04.2021. It is further submitted that with the approval of the specified authority, show cause notice dated 21.03.2022 was issued to the petitioner providing an opportunity of being heard and calling upon to show case as to why notice under Section 148 of the Act should not be issued in its case. 6.1. It was further submitted that the petitioner was subjected to scrutiny under Section 143(3) of the Act and thereby the respondent was available with the complete authority to make appropriate enquiries since the petitioner had duly satisfied with the anxieties of the respondent in this Page 4 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined regard to the computation of the capital gain in relation to the sale of shares.

7. Having heard the learned counsel appearing for the respective parties and having perused the material on record, it would be proper to go through the reply filed by the petitioner in the original assessment proceedings which are appended at page 48 to 57 of the writ petition. A specific information revealed by the petitioner which is appended at page 55 of the writ petition. The reply clearly provides information with regard to Section 54F of the Act considering the sale of shares and the amount deposited in the capital gain account which is reproduced as under :- "54F. (4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :....."

8. Further in the Assessment Order dated 12.03.2021 passed under Section 143(3) of the Act for Assessment Year 2018-19, it is categorically observed as under : "2. Notice u/s 143(2) was issued on 22.09.2019 and date of online submission was fixed on 07.10.2019. Subsequently, notices u/s 142(1) were issued on various dates as per order sheet. In responses to notices issued u/s 142(1) of the Income-tax Act, 1961, the assessee furnished the requisite details electronically. The assessee company is an individual. During the year, his sources of income has been salary, capital gains and income from other sources.

3. During the course of assessment proceedings, the assessee Page 5 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined furnished relevant details and evidences in support of income declared in the return of income. The same were perused in view of the guidelines issued by the CBDT from time to time. On the basis of material available on record i.e. return of income filed and details and documents furnished during the assessment proceedings vis-à-vis reason for selection of the case for scrutiny, the explanation of the assessee on the issue(s) is accepted.

4. In view of the above returned, income of the assessee is accepted.

5. Assessed u/s 143(3) of the Income-tax Act, 1961 at total income of Rs. Rs. 27,26,64,000/-. Give credit for taxes after due verification. Charge interest u/s 234A, 234B, 234C and 234D as per relevant and applicable provisions of Income-tax Act, 1961. Tax computation forms integral part of this order. Issue Demand Notice and challan accordingly."

9. On going through the same, it is not in dispute that the reasons recorded in the order issued under Section 148A(d) of the Act was already considered by the Assessing Officer in the Assessment Order dated 12.03.2021 passed under Section 143(3) of the Act. The Assessing Officer does not have the power to review his own assessment arrived at during the original assessment. The petitioner had provided all the information which was considered by the respondent. It is settled law that the proceedings under Section 148 of the Act cannot be initiated to review the earlier stand adopted by the Assessing Officer. The Assessing Officer cannot initiate reassessment proceedings to have relook with the documents filed in the original assessment proceedings. The power to reexamine cannot be exercised from time to time. This issue has been categorically settled by the Hon'ble Apex Court in case of Commissioner of Income Tax, Delhi v. Kelvinator of India Limited reported in (2010) 320 ITR 561 (SC), wherein the Hon'ble Court has held as under: "2. A short question which arises for determination in this batch of civil appeals is, whether the concept of "change of opinion" stands obliterated with effect from 1st April, 1989, i.e., after substitution of Section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1987?"

4.prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, Page 6 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026 NEUTRAL CITATION C/SCA/8645/2022 JUDGMENT DATED: 10/03/2026 undefined 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1st April, 1989, power to re-open is much wider, However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer....."

10. In view of the above, the present petition is required to be allowed and the same is hereby allowed. The impugned order dated 07.04.2022 passed under Section 148A(d) of the Act and the notice of same date issued under Section 148 of the Act are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to cost. (A. S. SUPEHIA, J) (PRANAV TRIVEDI,J) phalguni/4(Board-III) Page 7 of 7 Uploaded by PHALGUNI PATEL(HC00175) on Fri Mar 13 2026 Downloaded on : Sat Mar 14 09:27:32 IST 2026