

Anilkumar Ramabhai Patel vs Income Tax Officer Ward - 7(2)(1)

ID: F2J-C-2243 Court: Gujarat High Court

Case: R/SPECIAL CIVIL APPLICATION NO. 7816 of 2023 Date: 2025-09-15

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Gujarat High Court Anilkumar Ramabhai Patel vs Income Tax Officer Ward - 7(2)(1) on 15 September, 2025 Author: Bhargav D. Karia Bench: Bhargav D. Karia NEUTRAL CITATION

C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025

undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7816 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and HONOURABLE MR. JUSTICE PRANAV TRIVEDI =====

Approved for Reporting Yes No ■===== ANILKUMAR RAMABHAI
PATEL Versus INCOME TAX OFFICER WARD - 7(2)(1) & ANR.

===== Appearance: MR MANISH J SHAH(1320) for the Petitioner(s) No.

1 MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1 NOTICE SERVED BY DS for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 15/09/2025

ORAL JUDGMENT (PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Manish Shah for the petitioner and learned Senior Standing Counsel Ms. Maithili Mehta for the respondents.

2. Rule returnable forthwith. Learned Senior Standing Counsel Ms. Maithili Mehta waives service of notice of rule on behalf of the Page 1 of 10

Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION

C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined respondent.

3. Considering the issue involved and with consent of learned advocates appearing for respective parties, the petition is taken up for final hearing today.

4. This petition is filed under Article 226 of the Constitution of India challenging initiation of reassessment proceedings for Assessment Year 2019-20 by issuing Notice under section 148 of the Income Tax Act (for short "the Act") dated 20.03.2023 and order dated 18.3.2023 passed under Section 148A(d) of the Act primarily on the ground that initiation of proceedings was on incorrect facts and against the principles of natural justice.

5. Facts in brief are that the petitioner is a Non-Resident Indian (For short "NRE") and Managing Partner of Grant Thornton, Uganda. The petitioner over the past years, has been Page 2 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined remitting overseas savings NRE Accounts in India and also investing in funds, time deposits and other approved modes of investment. 5.1 It is the case of the petitioner that the petitioner being a non-resident, overseas income earned is not taxable in India in terms of Section 9 read with Section 5 of the Act. Therefore, the petitioner was not under obligation to file Income Tax Return in India. 5.2 The petitioner received intimation under Section 148A(a) of the Act dated 6.2.2023 for the F.Y. 2018-19 relevant to A.Y. 2019-20 stating that the respondent is in possession of the information that despite carrying out the transaction of Rs.20,93,65,261/-, the return of income was not filed by the petitioner. In response to the Notice under Section 148A(a), the petitioner furnished his response on the online portal on 13.2.2023. Page 3 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined 5.3 It was pointed out vide reply dated 13.2.2023 that in view of the provision of section 10(4) (ii) of the Act, any income earned by way of interest on moneys standing to credit in Non- Resident external account, is exempt from tax. It was also brought to the notice of Respondent No.1 that, the petitioner is a Non-Resident Indian even in terms of provision of Foreign Exchange Management Act (For short "FEMA") as the petitioner is satisfying the eligibility criteria. Even the bankers of the petitioner have classified the petitioner as a Person Resident outside India under the FEMA Regulations. 5.4 It is the case of the petitioner that in respect of the tabular information reproduced in the notice issued u/s.148A(a), the petitioner had provided his explanation against each piece of information in the similar tabular format as of the notice. On perusal of the said explanation, it can be seen that barring the information of Page 4 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined Rs.798/- in respect of TDS deducted by HDFC Bank, all the information pertains to investments made in earlier years. It was specifically stated that, no fresh investments pertaining to most of the information were made in the year under consideration. 5.5 It is the case of the petitioner that income earned/ accrued in India, which is taxable in India in terms of provisions of section 9 of the Act, has never exceeded the maximum amount, which is not chargeable to tax under the Act and therefore petitioner was not liable to file Return of Income. 5.6 It is the case of the petitioner that despite reply given, a notice under Section 148A(b) of the Act dated 14.2.2023 was received by the petitioner proposing the reassessment for F.Y. 2019-20. It is the specific case of the petitioner that the respondent has not considered the reply filed by the petitioner on 13.2.2023 Page 5 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined and made an incorrect factual statement that the

petitioner has not responded to the notice dated 6.2.2023. Therefore, the petitioner filed a detailed objection against the proposal of reassessment vide communication dated 14.2.2023 and submitted on the Portal on 15.2.2023. In communication dated 15.2.2023, the petitioner additionally furnished a tax residency certificate issued by Uganda Revenue Authority to substantiate that the petitioner was a tax resident in Uganda. The respondent proceeded to pass impugned order under Section 148A(d) of the Act on 18.3.2023, stating that the case of the petitioner is a fit case to issue Notice under Section 148 of the Act. On the basis of such observation, impugned notice under Section 148 was issued on 20.3.2023.

6. Being aggrieved petitioner has preferred the present petition. Page 6 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined

7. It was submitted by learned advocate Mr. Manish Shah for the petitioner that respondent in its order passed under Section 148A(d) had neither objectively considered the reply furnished by the petitioner nor furnished any reason of disagreement with the stand taken by the petition. In spite of the same, the respondent passed the impugned order in a mechanical manner without applying mind to the information furnished, ignoring the factual contention by put forward by the petitioner.

8. Per contra, learned Senior Standing Counsel Ms. Maithili Mehta was not in a position to counter the contention raised by the petitioner. It was submitted that a notice under Section 148A(d) was issued on the basis of the information that the assessee was identified as a 'non-filer' on Insight Portal under Non Filer Monitoring System. It was further submitted that the petitioner has failed to prove that no income was Page 7 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined taxable in India despite carrying out high value transaction. The proceedings under Section 148A and under Section 148 of the Act are carried out in accordance with law.

9. Considering the submissions, it is noticed that the status of assessee as Non-Resident Indian and having settled in Uganda, is not in dispute. In response to the notice under Section 148A(a) of the Act, the assessee had filed its reply dated 13.2.2023 in which the source of income was explained. The respondent has not considered the response given by the petitioner. From the facts of the case, it is evident that the remission was from the overseas savings to NRE Accounts in India. The petitioner has furnished the tax residency certificate issued by the Uganda Revenue Authority to substantiate that he is a tax resident in Uganda.

10. This Court in case of Nitin Mavji Vekariya v. Income-Tax Officer, reported in [2024] 461 ITR 18 Page 8 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined (Guj), has held that, income earned by the assessee since was received from non-resident (external) accounts, the same was exempt under Section 10(4)(ii) of the Act and therefore there was no question of escapement of income.

11. Moreover, in the case of Nitin Mavji Vekariya (supra), this Court has held as under:

"5. Undisputedly, the funds came from non- resident (external) accounts and the source therefore was beyond the reach of the authorities. Even on reading the provisions of section 10(4), it is apparent that such incomes are exempt from being included in the total income."

12. Thus, on both the counts, the income earned in NRE Account is exempt under section 10(4)(ii) of the Act and the source of income is explained by the assessee and the Certificate of Tax Residency is also provided by the Uganda Revenue Authority, we do not find any Page 9 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025 NEUTRAL CITATION C/SCA/7816/2023 JUDGMENT DATED: 15/09/2025 undefined justification for issuance of Notice under section 148, as also for passing of order under section 148A(d) of the Act.

13. In view of the above, the present petition is allowed. The Notice under Section 148 of the Tax Act dated 20.3.2023 and the order under Section 148A(d) of the Act dated 18.3.2023 are hereby quashed and set aside. Rule is made absolute. No order as to costs.

(BHARGAV D. KARIA, J) (PRANAV TRIVEDI, J) SAJ GEORGE Page 10 of 10 Uploaded by SAJ GEORGE(HC01069) on Fri Sep 19 2025 Downloaded on : Sat Sep 20 03:55:48 IST 2025