# Lata Kamalbhai Shah Lh Of Late Kamalbhai vs National Faceless Assessment Centre,

**ID:** F2J-C-2300 **Court:** Gujarat High Court
**Case:** R/SPECIAL CIVIL APPLICATION NO. 12942 of 2022 **Date:** 2025-06-23





Gujarat High Court Lata Kamalbhai Shah Lh Of Late Kamalbhai ... vs National Faceless Assessment Centre, ... on 23 June, 2025 Author: Bhargav D. Karia Bench: Bhargav D. Karia NEUTRAL CITATION

C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025

undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12942 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and HONOURABLE MR. JUSTICE PRANAV TRIVEDI ========================================================== Approved for Reporting Yes No

========================================================== LATA KAMALBHAI SHAH LH OF LATE KAMALBHAI RAMNIKLAL SHAH & ANR. Versus NATIONAL FACELESS ASSESSMENT CENTRE, DELHI & ANR. ========================================================== Appearance: MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1,2 KARAN G SANGHANI, SR. STANDING COUNSEL for the Respondent(s) No. 1,2 ========================================================== CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 23/06/2025 ORAL JUDGMENT (PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA) 1 Heard learned advocate Mr.Hardik Vora for the petitioner and learned Senior Standing Counsel Mr.Karan Sanghani for the respondent. 2 Rule returnable forthwith. Learned Senior Page 1 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined Standing Counsel Mr.Sanghani waives service of notice of rule for the respondent. 3 Having regard to the controversy involved 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 hearing. 4 By this petition under Article 227 of the Constitution of India, the petitioner has challenged the notice dated 21.04.2020 issued under Sec.148 of the Income Tax Act, 1961 (for short 'the Act')as well as the Assessment Order dated 27.03.2022 passed under Sec.147 read with Sec.144B of the Act. 5 The brief facts of the case are that the petitioners are the legal heirs of one Kamalbhai Ramniklal Shah, who expired on Page 2 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined 12.03.2013. After the death of late Shri Kamalbhai Shah, the petitioners filed return of income for the Assessment Year 2013-14 declaring total income at Rs.15,64,200/- on 05.08.2013. In the return of income, capital gains arising out of the property situated at Plot No.4617 Arignar, Anna Nagar, Mullam village, Chennai, Tamil Nadu, was disclosed after availing the benefit under Sec.54F after placing the fixed deposits in name of the legal heirs under the Capital Gain Accounts Scheme with the IDBI Bank amounting to Rs.90 lakhs on 03.1.2013 and Rs.95 lakhs on 08.1.2013. 5.1 It is the case of the petitioners that late Kamalbhai Ramniklal Shah, along with three brothers were gifted with the aforesaid property in equal proportion i.e. 25% each by their mother through Settlement Deed dated Page 3 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined 18.08.2009 and the said property was sold for a consideration of Rs.13,72,00,000/- on 19.12.2012 and the share of late Kamalbhai Ramniklal Shah was Rs.34,300,000/-. 5.2 After the sad demise of late Kamalbhai Shah, the fixed deposits in Capital Gain Accounts Scheme was made in the name of the petitioner Ajit Shah amounting to Rs.40 lakhs on 26.07.2013 and further REC bond were purchased amounting to Rs.20 lakhs on 21.05.2013 and NHAI bonds amounting to Rs.30 lakhs on 26.5.2013 in name of Lata Kamalbhai Shah, the wife of late Kamalbhai Shah. 5.3 The respondent - Assessing Officer, issued the impugned notice dated 21.04.2020 for re- opening the assessment for the year under consideration on the information that late Kamalbhai Shah sold the immovable property Page 4 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined during the year under consideration but the long term capital gains was not disclosed in the return of income ignoring the aforesaid facts of filing the returns by the petitioners in the capacity of the legal representatives. 5.4 Thereafter, notices under Sec.142(1) dated 29.09.2020, 19.03.2021 and 27.09.2021 were issued calling for the details and necessary documents which were provided by the petitioners. The petitioners were also called upon to provide the details by notice dated 29.09.2021 under Sec.142(1) of the Act regarding the capital gains disclosed in the Income Tax Returns which were provided by the petitioners along with the Sale Deed, Settlement Deed, proof of expenditure on sale of property, proof of exemptions claimed and computation of capital gains, by reply dated 07.10.2021. Page 5 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined 5.5 In response to the notice dated 23.11.2021 was issued under Sec.141 of the Act, calling for the certified statement from the bank confirming the investments made under the Capital Gains Scheme and to show cause as to why the exemption under Sec.51 should not be denied as it was not done in the name of late Kamalbhai Shah. Petitioner No.2 Ajitbhai Shah, legal heir of the petitioner submitted a copy of statement from the bank with period of holding of investment in Capital Gains Account along with date of investment and maturity and withdrawal date. It was also intimated to the respondent - Assessing Officer that the late Kamalbhai Shah died on 12.03.2013, hence the investment after his demise could not be done in his name and accordingly, the investment was made in the name of the petitioners who are wife and son of late Kamalbhai Shah. Page 6 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined 5.6 It was also pointed out that the property which was sold was a gifted property and the date of acquisition of the previous owner is required to be considered and hence, the petitioners have considered the trade market value as on 01.04.1981. Thereafter, the respondent No.1 passed the impugned order dated 23.03.2022 by only restricting the addition under Sec.54 to Rs.2,10,00,000/- instead of Rs.2,95,75,000/- and thereby making an addition of Rs.85,75,000/- under the head of Capital Gains. 6 Learned advocate Mr.Hardik Vora for the petitioners submitted that the impugned notice issued under Sec.148 which has culminated into the Assessment Order is without jurisdiction, and therefore, the petitioner, instead of filing an appeal before the CIT(Appeals) challenging the impugned assessment order has Page 7 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined preferred this petition invoking extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. 6.1 It was submitted that the petitioners have categorically intimated the respondent- Assessing Officer that after the sad demise of Kamalbhai Shah, the petitioners have filed the return of income and investments for claiming deduction under Sec.54 was made in the name of the petitioners who are legal heirs of late Shri Kamalbhai Shah, and thereafter, the return was filed by the petitioners for complying with the conditions of Sec.54. It was submitted that inspite of such facts being narrated by the petitioners in their reply filed in response to the notices issued by the respondent- Assessing Officer from time to time, the same have been ignored and the respondent - Assessing Officer made a Page 8 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined disallowance of Rs.85,75,000/- by ignoring the investment made by the petitioners in their name being legal heirs of late Shri Kamalbhai Shah out of the sale consideration of the property sold during his life time. 6.2 It was therefore submitted that the respondent - Assessing Officer could not have assumed the jurisdiction as there is no escapement of income in the facts of the case. 6.3 It was further submitted that the Assessing Officer has reproduced the reasons recorded in the impugned Assessment Order which clearly shows that there is no failure on the part of the petitioners for not disclosing the Long Term Capital Gains for the return of income on the sale consideration of Rs.3,43,00,000/- by claiming and there was a clear mentioning of the amount of investment Page 9 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined of Rs.3 crores against the full value of consideration received on the sale of the Long Term immovable property. It was therefore submitted that the respondent- Assessing Officer could not have assumed the jurisdiction to re-open the assessment in absence of any income having been escaped for the year under consideration. 6.4 It was further submitted that the respondent - Assessing Officer in spite of being aware about the fact that the petitioners have made investments after the date of sad demise of late Kamalbhai Ramniklal Shah in the names of the legal heirs, the same ought to have been taken into consideration while passing the impugned assessment order and no disallowance could have been made of the investments made by the petitioners of Rs.90 lakhs after the sad demise comprising of Page 10 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined Rs.40 lakhs in the name of Shri Ajitbhai Shah having been invested in Capital Gain Accounts Scheme and Rs.20 lakhs in REC bond and Rs.30 lakhs in NHAI bond invested in the name of Lata Kamalbhai Shah, wife of late Kamalbhai Shah. 6.5 It was therefore submitted that Rs.90 lakhs invested as required by Sec.54 to claim the deduction could not have been disallowed by the respondent - Assessing Officer only on the ground that the same was invested in the name of the legal heirs of the assessee whose return of income was filed by the petitioners in the capacity of the legal representative. 6.6 It was therefore submitted that the impugned notices as well as the Assessment Order are liable to be quashed and set aside. In support of his submission,reliance was Page 11 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined placed on the decision of the Hon'ble High Court of Andhra Pradesh in the case of Mir Gulam Ali Khan vs. Commissioner of Income- Tax., reported in [1987] 165 ITR 228 (Andhra Pradesh). It was submitted that in the facts of the said case the exemption on profits arising out of sale of residential house by making investment as a legal heir representative within stipulated period of one year was considered valid for granting the deduction under Sec.54 of the Act. 7 On the other hand learned Senior Advocate Mr. Karan Sanghani submitted that, admittedly, the petitioners have filed the return of income on 06.08.2013 after the sad demise of late assessee Shri Kamalbhai Ramniklal Shah. Therefore, the petitioners were aware about the facts and the petitioners cannot plead that the impugned order was passed against a Page 12 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined dead person. 7.1 It was further submitted that the respondent- Assessing Officer, after considering the replies filed by the petitioners, has passed the impugned assessment order and therefore, the petitioners are required to avail the alternative efficacious remedy by preferring an appeal before the CIT(Appeals) to challenge the impugned assessment order on merits. It was further submitted that the petitioners once having participated in the assessment proceedings could not have now preferred a petition challenging the jurisdiction of the respondent - Assessing Officer to re-open the assessment at this stage. In support of his submission, reliance was placed on the following averments made in the affidavit-in- reply filed on behalf of the respondent No.2: Page 13 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025

NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined "6 With respect to contentions raised in Ground3.2, it is submitted that the plea of the assessee is incorrect and the action of the AO in finalization of the assessment for the year under consideration is very much enforceable in eyes of law. The onus lies on the assessee/legal heir to inform the department about the death of the assessee which took place on 12.03.2013. The assessee legal heir never brought to the knowledge of the department about the death of the assessee before notice u/s. 148 of the Act was issued on 21.04.2020.

It was brought to the notice of the department only on 21.12.2021 (i.e. in the 2nd submission) and that too after granting ample opportunities vide notices dated 21.04.2020, 29.09.2020, 19.03.2021, 27.09.2021, 23.11.2021 and 09.12.2021 u/s. 148, u/s. 142(1) of the Act calling for information relevant to the escapement of income. It is also pertinent to mention here that the assessee/legal heir has never challenged issue of notice u/s.148 of the Act on the deceased assessee in the entire assessment proceedings which are very much evident from the only three submissions filed by the assessee during the entire course of assessment proceedings in the case, hereto annexed as Annexure R-I, R-II & R-III. Thus, it can be concluded that the plea of the assessee is an afterthought and lacks merit.

7. With respect to contentions raised in Ground 3.3, it is submitted that the decision cited by the petitioner does not squarely apply in the instance case. In Page 14 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined this case, the assessee expired on 12.03.2013, however the return of income was filed on 05.08.2013 for the year under consideration. Secondly, the onus lies on the assessee/legalheir to inform the department about the death of the assessee. Further, it is evident from the record of the office that no such update / information was filed by the assessee/legal heir. The department came to know of the death of the assessee only when during the course of assessment proceedings after having granted ample opportunities to the assessee vide notices issued u/s. 148/u/s 142(1) of the Act to file details /explanation /information relevant to the escapement of income, the assessee / legal heir in his second submission filed on 21.12.2021 stated that the assessee has expired on 12.03.2013. It is pertinent to mention here that notice u/s 148 of the Act was issued 21.4.2020. Moreover, in the entire assessment proceedings and till its finalization, the assessee /

legal heir has never challenged the issue of notice u/s 148 of the Act. Further, on the knowledge of the death of the assessee, the NeFAC had finalized the assessment u/s 147 r.w.s. 144B with the following remarks:

"After due consideration of reply and facts of the case, it is relevant to mention here that a return for the year under consideration was filed on 05.08.2013 after the death of the assessee. So, how can a deceased person file a return of income and claim deduction of 54 of the Act in the ITR. So, Page 15 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined it is clear that the return has been filed by the legal heir/representative of Shri Kamal Ramniklal Shah. After consideration of all the facts of the case, I am concluding the Assessment in the hands of the legal heir for the interest of the Revenue."

8. With respect to contentions raised in Ground 3.4, it is submitted that how can a dead person file return of income. Thus, the NeFAC has finalized the assessment in the hands of the legal heir in the interest of the Revenue.

9. With respect to contentions raised in Ground 3.5 to 3.7, it is submitted that in section 54 of the Act, the word 'assessee' is mentioned for the purpose of benefit in respect of investment in capital gain account. As the investment made in the capital gain account after the death of the assessee is deemed to have not been invested by the assessee and considered not eligible for deduction of Rs.90,00,000/- (which were made after the death of the assessee and were also not in the name of the assessee) u/s. 54 of the I.T.Act, 1961.

10. With respect to contentions raised in Ground 3.8, it is submitted that in section 54 of the Act, the word 'assessee' is mentioned for the purpose of benefit in respect of investment in capital gain account. As the investment made in the capital gain account after the death of the assessee is deemed to have not been invested by the assessee and considered Page 16 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined not eligible for deduction of Rs.90,00,000/- (which were made after the death of the assessee and were also not in the name of the assessee) u/s. 54 of the I.T.Act, 1961. Thus the question of taking a liberal interpretation is unwarranted.

11. With respect to contentions raised in Ground3.9, it is submitted that the same are formal and factual in nature, hence not replied to at present.

12. With respect to contentions raised in Ground 4.1, it is submitted that the notice and assessment order passed by the NeFAC is within the law as per the provisions of the Income Tax Act, 1961. The assessee had filed return of income for the year under consideration on 05.08.2013 after his death on 12.03.2013. Secondly, the onus lies on the assessee / legal heir to update/inform the department about the death of assessee viz. cancelling PAN etc. It is evident from the record of the office that no such update/information was filed by the assessee/legal heir. Further, the assessee/legal heir informed department about the death of the assessee in his second submission which was filed on 21.12.2021 only and that too after the department had already granted ample opportunities vide notices dated 21.04.2020, 29.09.2020, 19.03.2021, 27.09.2021, 23.11.2021 and 09.12.2021 u/s 148 u/s142(1) of the Act calling for information relevant to the escapement of income." Page 17 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined 7.2 Referring to the above, it was submitted that no interference may be made by the Court while exercising extraordinary jurisdiction and the petitioners may be relegated to prefer an appeal before the CIT(Appeals). 8 Having heard the learned advocates for the respective parties and having considered the facts of the case and the material placed on record, it is not in dispute that the late Kamalbhai Ramniklal Shah expired on 12.03.2013, and thereafter, the petitioners who are the legal heirs have made investments in the Capital Gains Accounts Scheme as well as the REC and NHAI bonds for Rs.90 lakhs in their names being legal heirs. 8.1 Sec.54 of the Act provides for exemption / deduction from the capital gains and it is not in dispute that the amount invested by the Page 18 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined petitioners out of the sale consideration of Rs.3,43,00,000/- received by late Kamalbhai Ramniklal Shah in their name being legal heirs was in accordance with the conditions provided under Sec.54. Therefore, the respondent - Assessing Officer could not have assumed the jurisdiction to reopen the assessment on the ground that only because the investment was made in name of the petitioners who are legal heirs to claim exemption under Sec.54 of the Act would result into escapement of the income. 8.2 The Hon'ble Andhra Pradesh High Court in similar facts in the case of Mir Gulam Ali Khan (supra) held as under:

"3. The learned counsel for the assessee, Mr.Ranganadham, contended that this is a case where exemption ought to have been allowed under Section 54, Section 54 is as follows:

"Profit on sale of property used for residence-(1) Where, in the case of an Page 19 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined assessee being an individual, the capital gain arises from the transfer of a long- term capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head 'Income from house property' (hereafter in this section referred to as the original asset), and the assessee has within a period of three years after that date constructed, a residential house, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-

(i)if the amount of the capital gain is greater than the cost of the house property so purchased or constructed (hereafter in this section referred to as the new asset) the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii)if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its Page 20 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation : For the purposes of this sub-section, 'long term capital asset' means a capital asset which is not a short-term capital asset." Relying upon the expression 'assessee' occurring in section 54, it is contended by the department that in order to claim the exemption, the person who sold the house must be the same as the person who purchased the house, that is, the assessee must be one and the same person. The identity must be the same. We are unable to accept this contention. The object of granting exemption under section 54 is that a person who sells a residential house for the purpose of purchasing an other convenient house must be given exemption so far as capital gains are concerned. As long as the sale of the house and purchase of another house are part of the same scheme the lapse of some time between the sale and purchase makes no difference. The word 'assessee' must be given a wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giging too strict an interpretation to the word 'assessee' as that would frustrate the object of granting exemption and what is more, in the instant case the very same assessee immediately after the sale if the house, entered into an agreement for purchasing another house and paid a sum of Rs,1,000 as earnest money and subsequently the Page 21 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined legal representative completed the transaction within a period of one year from the date of the death of the deceased. The sale and purchase are two links in the same chain. We are fortified in this view by a decision of the Madras High Court in C.V.Ramanathan v. CIT [1980] 125 ITR 191." 8.3 Even otherwise, the reasons recorded by the Assessing Officer which are reflected in the impugned assessment order only refers to the disallowance of Rs.3,43,00,000/- as it was on the ground that the same was not disclosed in the return of income and the entire amount of sale consideration would be liable to be taxed under the head of capital gain. Thereafter, it appears that the respondent- Assessing Officer without there being any tangible information , that income had escaped assessment and without considering the fact that the petitioners have filed the return of income after the sad demise of the late Kamalbhai Ramniklal Shah, wherein the Page 22 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined petitioners have disclosed the fact of sale of the immovable property and deposit of such sale consideration to claim the deduction under sec.54 amounting to Rs.3 crores as against the amount liable for capital gains of Rs.2,95,75,000/- and as such no capital tax was payable by the petitioners in view of the investments made as required under Sec.54 of the Act, has passed the impugned Assessment Order by disallowing the capital gains of Rs.85,75,000/- only on the ground that the amount of Rs.90 lakhs was deposited after the sad demise of Kamalbhai Ramniklal Shah in the name of the petitioners as legal heirs and therefore the same could not have been considered as an amount invested as required under Sec.54 of the Act. Such an hypertechnical approach adopted by the respondent-Assessing Officer can never be said Page 23 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025 NEUTRAL CITATION C/SCA/12942/2022 JUDGMENT DATED: 23/06/2025 undefined to provide ground for assumption of jurisdiction to reopen the assessment. 9 In view of the foregoing reasons, this petition succeeds and accordingly, the impugned notice dated 21.04.2020 issued under Sec.148 of the Income Tax Act, 1961 as well as the Assessment Order dated 27.03.2022 passed under Sec.147 read with Sec.144B of the Act are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No orders as to costs. (BHARGAV D. KARIA, J) (PRANAV TRIVEDI,J) BIMAL Page 24 of 24 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Tue Jul 01 2025 Downloaded on : Sat Jul 05 00:42:10 IST 2025