



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18254 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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**AMEE MAHASUKHLAL PAREKH AS LR OF LATE MAHASUKHLAL
NAVNIDHLAL PAREKH**

Versus

INCOME TAX OFFICER WARD 1(1)(1) OR HIS SUCCESSOR

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Appearance:

MR SN DIVATIA(1378) for the Petitioner(s) No. 1

KARAN G SANGHANI(7945) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 23/09/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)



1. RULE. Learned senior standing counsel, Mr. Karan Sanghani waives service of notice of admission on behalf of the respondent.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the notice dated 30.07.2022 issued under Section 148 of the Income Tax Act, 1961 (for short 'the Act') for the Assessment Year 2015-16.

3. The brief facts of the case are as under:-

3.1 The petitioner is a legal heir of late Mahasukhlal Navnidhlal Parekh who filed the original return of income for the Assessment Year 2015-16 on 31.08.2015.

3.2 Late Mahasukhlal Navnidhlal Parekh expired on 30.09.2019.

3.3 The notice under Section 148 of the Act was issued under the old regime for reassessment for Assessment Year 2015-16 on 16.06.2021.

3.4 The petitioner filed a reply dated 23.11.2021 in response to the notice under Section 142(1) dated 17.11.2021 and also filed return of income in the name of the deceased in response to the notice under Section 148 under the old regime and pointed out that the father of the petitioner late Mahasukhlal Navnidhlal Parekh had expired on 30.09.2019.

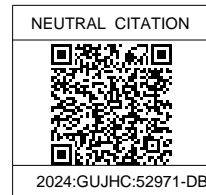
3.5 Thereafter, pursuant to the decision of the Hon'ble



Supreme Court in the case of Union of India V/s. Ashish Agarwal 2022 SCC Online SC 543 notice under Section 148A(b) of the Act was issued on 28.05.2022. The petitioner filed the reply pursuant to the said notice on 17.06.2022 raising the objection that notice under Section 148 as well as notice under Section 148A(b) was issued against the name of her late father and therefore such notices issued against dead persons are without jurisdiction. Reliance was placed on the decision of this Court in the case of Rasid Lala V/s Income Tax Officer vide order dated 29.11.2016 passed in Special Civil Application No. 18987 of 2016 and cognate matters. The petitioner also without prejudice to the preliminary objections contended that the loan amount which was the subject matter of proposed scrutiny was paid out of the balance in the bank account of the deceased by NEFT. In support of such contentions copy of the bank statement was also annexed with the reply.

3.6 The respondent passed the impugned order under Section 148A(d) of the Act on 29.07.2022 as well as the notice dated 30.07.2022 under Section 148 of the Act in the name of the petitioner on the ground that there is an escapement of Rs.3,25,00,000/- as the late father of the petitioner advanced loan during the year and source of which has remained unexplained and therefore there is escapement of income to that extent for the year under consideration.

4. Learned advocate Mr. S. N. Divatia for the petitioner submitted that the loan was given on 04.09.2014 and it was repaid on 21.09.2015 and therefore there cannot be any escapement of income for the year under consideration.



Learned advocate Mr. Divatia also invited the attention of this Court to the reply filed by the late father of the petitioner in response to the notice under Section 133(6) of the Act dated 29.09.2017 to point out from the bank statement that the amount was given on 04.09.2014 and the same was returned in September, 2015. Learned advocate for the petitioner therefore submitted that there is no escapement of income for the year under consideration since on 04.09.2014 the petitioner had received the amount from Mr. Hardik Parekh and on the same day had advanced loan to Ms. Darshana Doshi. It was therefore submitted that the reason on which the Assessing Officer had found it to be fit case to reopen does not exist.

5. On the other hand, learned Senior Standing Mr. Karan Sanghani submitted that the petitioner has failed to show the source of Rs.3,25,00,000/- which was advanced to Ms. Darshana Doshi in the year under consideration which is alleged to have been returned back in the subsequent year in the month of September, 2015 and accordingly there is an escapement of income to the extent of Rs.3,25,00,000/- for the year under consideration. It was further submitted that the original notice was issued in the name of late Mahasukhlal Navnidhlal Parekh which has subsequently been rectified by issuing the impugned order under Section 148A(d) in the name of the petitioner. It is also submitted that the impugned notice under section 148 of the Act dated 30.07.2022 was also issued in the name of the petitioner and therefore the present petition should not be entertained.

6. Having heard the learned advocates for the respective



parties and considering the facts of the case and on perusal of the bank statement placed on record at Page Nos. 34 and 35 of the paperbook, it is apparent that there is no escapement of income since the amount was received by the late father of the petitioner on 04.09.2014 from Mr. Hardik Parekh and was paid by NEFT to Ms. Darshana Doshi on the same day. Similarly, the amount was received back on 19.09.2015 from Ms. Darshana Doshi and returned to Mr. Hardik Parekh. In such circumstances, there is no escapement of income of the late father of the petitioner is concerned. The reason given by the Assessing Officer for alleged escapement of Rs.3,25,00,000/- is therefore not sustainable since there is no unexplained amount in the bank statement on record since the assessee did not retain the amount of Rs.3,25,00,000/- and as such the ingredients of Section 68 are not attracted.

7. In such circumstances, we are of the opinion that the Assessing Officer could not have come to the conclusion that it is a fit case for reopen the assessment. The petition therefore succeeds and is accordingly allowed. The impugned notice dated 30.07.2022 issued under Section 148 of the Act and consequential actions, if any, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(MAUNA M. BHATT, J)

SHRIJIT PILLAI