



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11214 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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

NATHALAL HEMABHAI PATEL (PROPRIETOR OF M/S PATEL
 GOVINDBHAI SOMABHAI AND CO.)

Versus

INCOME TAX OFFICER, WARD 1, MEHSANA

Appearance:

MR RUSHIN PATEL(13690) for the Petitioner(s) No. 1

MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 30/09/2024

ORAL JUDGMENT

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

1. Heard learned advocate Mr. Rushin Patel for



the petitioner and learned Senior Standing Counsel Mr.Karan Sanghani for learned advocate Mrs.Kalpana K. Raval for the respondent.

2. **Rule**, returnable forthwith. Learned Senior Standing Counsel Mr.Karan Sanghani for the respondent waives service of notice of rule for and on behalf of the respondent.

3. Having regard to the controversy in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :



"(A) This Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned order u/s 148A(d) dated 20.03.2023 at Annexure-K and notice issued u/s 148 dated 20.03.2023 at Annexure-L and all further proceedings in pursuance thereof including reassessment order if passed.

(B) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction asking the respondent not to proceed further in pursuance of section 148 notice at Annexure-L."

5.1. Brief facts of the case are that the petitioner is a proprietor of M/s.Patel Govindbhai Somabhai and Company having PAN No.AORPP8404L. The petitioner received a



notice under Section 148A(a) of the Income Tax Act, 1961 (for short 'the Act') in name of M/s.Patel Govindbhai Somabhai and Company-a partnership firm having PAN No.AAFFP3449M for Assessment Year 2019-20. The petitioner was one of the partner of the said firm till 2016 and thereafter, the partnership firm was converted into proprietorship firm of the petitioner.

5.2. The petitioner therefore did not reply to the said notice. The respondent thereafter issued the notice under Section 148A(b) of the Act on 9th February, 2023 on the ground that the said firm had withdrawn the cash amount of Rs.2 crore 80 lakhs from the Bank of Baroda on the basis of the annual information received by the insight portal under the category "NMS cases" as per RMS CYCLE-2. The petitioner by



reply dated 20th February, 2023 contended that the partnership firm has been dissolved with effect from 31st March, 2016 and is not in operation from 1st April, 2016. It was also pointed out by the petitioner that the Bank of Baroda has committed a mistake by writing wrong PAN as the petitioner is the sole proprietor of the firm having PAN No.AORPP8404L after dissolution of the partnership firm. It was also pointed out that the Bank Account is also not changed by the Bank and therefore, the Bank mistakenly furnished the information of the firm for the financial year 2018-19 in old PAN No.AAFFP3449M instead of newly updated PAN No. of the petitioner being proprietor of the firm. The respondent, however, without considering the contention of the petitioner that the notice under Section 148 was issued



on a dissolved firm, passed an order dated 19th March, 2023 under Section 148A(d) of the Act on the ground that income of Rs.2 crore 8 lakhs has escaped assessment by observing as under :

"5. The reply furnished by the assessee has been considered. The assessee stated that the firm has been taken over by proprietorship; however, the PAN has not been updated in Bank. The assessee accepted that there were cash withdrawals as mentioned in the show cause notice and made no objection against it. The assessee stated that cash was withdrawn to make payments to farmers. However, the assessee furnished the details of cash withdrawn of Rs.2,11,73,406/- only out of total cash withdrawn of Rs.2,80,00,000/- as reported. Even the bank statement was given by the assessee up to 12.04.2019 only. Thus, the assessee failed to explain the difference of Rs.68,56,594/- (Being total cash



withdrawals of Rs.2,80,00,000 - Rs.2,11,73,406) on account of cash withdrawals. Therefore, in the light of the above reasons, information and material available on record, I am of the considered view that the assessee has failed to explain the above mentioned transactions of Rs.68,56,594/- and income earned/derived there from, during the year under consideration and the same remained unexplained and unsubstantiated as per the relevant provisions of the Act. Hence, on the basis of material available on record which establish that the income chargeable to tax in respect of above mentioned unexplained transactions of Rs.68,56,594/- has escaped assessment for FY 2018-19 and therefore, this is a fit case for issuance of notice u/s 148 of the Act for Assessment Year 2019-20."

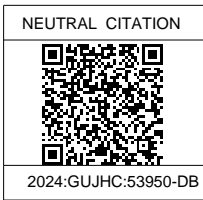
6.1. Learned advocate Mr.Rushin Patel for



the petitioner submitted that the respondent could not have passed the impugned order holding that this is a fit case to reopen the assessment as the entire proceedings is against the dissolved partnership firm. It was further submitted that even otherwise on merits, the cash withdrawn was to make the payments to Farmers by the petitioner and the same could not lead to the escapement of income.

6.2. It was therefore submitted that the petitioner has given all the details to the respondent with regard to the withdrawal of cash from the bank account of the petitioner which was duly reflected in the books of accounts as well as the return of income filed by the petitioner for Assessment Year 2019-20.

7. On the other hand, learned Senior Standing



Counsel Mr.Karan Sanghani for the respondent submitted that the petitioner has not informed the respondent-Department that the partnership firm has been dissolved on 31.03.2016. It was also pointed out that the petitioner failed to give reply to the notice dated 1st February, 2023 issued under Section 148A(a) of the Act. It was therefore submitted that no interference is called for and the petitioner may furnish the details during the course of the assessment proceedings to justify the withdrawal of Rs.2 crore 8 lakhs. It was therefore submitted that even if the impugned notice and the order are in the name of the partnership firm having the PAN No.AAFFP3449M, the same are not tenable and respondent may be permitted to initiate the proceedings against the petitioner in accordance with law.

8. Having heard the learned advocates for the



respective parties, it appears that the respondent-Assessing Officer has issued the impugned notice under Section 148A(b) of the Act in the name of the partnership firm having PAN No.AAFFP3449M as well as passed the order under Section 148A(d) of the Act against the said firm which has already been resolved with effect from 31st March, 2016.

9. In view of the undisputed fact about the dissolution of firm and the issuance of notice in name of the dissolved firm, the impugned notice and the order would not be tenable more particularly, when the petitioner has in reply to the notice issued under Section 148A(b) of the Act has drawn the attention of the respondent-Assessing Officer about such fact.

10. In view of the settled legal position as held by the Hon'ble Apex Court in case of



Maruti Suzuki Limited reported in ***Commissioner of Income Tax, New Delhi Versus Maruti Suzuki India Limited*** reported in ***[2019] 107 taxmann.com 375 (SC)***, the impugned notice and the order are required to be quashed and set aside.

11. Accordingly, the petition succeeds and the impugned notice as well as the order dated 20th March, 2023 are hereby quashed and set aside. However, it would be open for the respondent to initiate the proceedings, if required, under the provisions of the Act against the petitioner in accordance with law. Rule is made absolute to the aforesaid extent. No orders as to cost.

(BHARGAV D. KARIA, J)

(MAUNA M. BHATT, J)