

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7485 of 2026****With****R/SPECIAL CIVIL APPLICATION NO. 7605 of 2026****With****R/SPECIAL CIVIL APPLICATION NO. 7726 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

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Approved for Reporting	Yes	No
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JITENDRA SHANKARLAL MISTRI**Versus****THE INCOME TAX OFFICER, WARD-1 & ANR.****Appearance:****JAIMIN A GANDHI(8065) for the Petitioner(s) No. 1****MAUNIL G YAJNIK(9346) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**and****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI****Date : 29/06/2026****COMMON ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. The petitioner seeks to challenge the order dated 15.11.2025 disposing the objections filed by the petitioner regarding the jurisdiction to reopen the assessment. The petitioner is also challenging notice dated

30.03.2025, issued under section 148 of the Income Tax Act, 1961 (for short "the Act"). The petitioner is also challenging the assessment order dated 10.03.2026 consequent to the re-opening proceedings.

2. The captioned writ petition being Special Civil Application No.7485 of 2026 is taken up as lead matter since the issue involved is common.

3. The brief facts of the case are that, search was initiated at the premises of Khavda Travels Limited on or around 11.11.2022. The respondents claim that the premises of Khavda Travels Limited was used for carrying out cash financing business. The statement of Shree Deepak Audichya was recorded under Section 132 (4) of the Act, wherein at question 21 he has stated that they received interest of 2% - 3% per month on cash loan advanced by them and they paid interest at 1% - 1.5% per month on cash loan received by them.

4. The respondents submit that books of Khavda Property & Finance indicate cash receipts of Rs.59,06,680/- and cash payments of Rs.55,50,760/-, aggregating to Rs. 1,14,57,440/-

5. The respondent issued notice under Section 142(1) of the Act dated 11.10.2025. The respondent thereafter issued notice under Section 142(1) of the Act dated 23.11.2025. The respondent thereafter issued notice under Section 142(1) of the Act dated 13.01.2026. The petitioner filed objection to reopening dated 21.01.2026. The petitioner filed reply dated 21.01.2026 to the show cause notice.

6. Learned advocate Mr.Gandhi appearing for the petitioner has submitted that the impugned notice issued under Section 148 of the Act is without jurisdiction and bad in law, as the mandatory condition for invoking the extended limitation under Section 149(1)(b) of the Act is not fulfilled. There is no escapement of income represented in the form of any asset, expenditure or entry amounting to or exceeding Rs.50,00,000/- for the relevant assessment year. The transactions relied upon merely reflect temporary movement of funds, with the maximum outstanding balance (peak balance) at any point being only Rs.11,39,560/- with Khavda Property & Finance as on 28.05.2018, as reflected in the tally ledger. The Assessing Officer has mechanically aggregated debit and credit entries to artificially cross the statutory threshold. Such aggregation is legally impermissible and demonstrates complete non-application of mind. Hence, the assumption of jurisdiction is therefore vitiated and liable to be quashed. No further contention is raised.

7. Per Contra, learned Senior Standing Counsel Mr.Maunil Yajnik while pointing out the judgment of the Supreme Court in the case of Commissioner of Income-tax and Ors. Vs. Chhabil Dass Agarwal, 2014 (1) SCC 603, has submitted that since the assessment order dated 10.03.2026 under Section 147 of the Act is already passed, the petitioner has an alternate efficacious remedy of filing an Appeal before the Commissioner of Income Tax(Appeals) (CIT). It is submitted that it is not open for the petitioner to challenge the assessment order in the writ petition by contending that since on completion of assessment the income chargeable to tax is found to be less than 50 lakhs.

8. The petitioner filed his return of income under Section 139(1) of the Act on 10.07.2020 declaring the total income of Rs.4,98,500/-. After the search was undertaken under Section 132 of the Act against one Khavda group, and on the basis of incriminating material found during search connecting the petitioner, a notice under Section 148 of the Act was issued on 30.03.2025. In response to the said notice, the petitioner filed return of income on 30.06.2025 declaring the income of Rs.4,98,500/-. After the completion of assessment the total income of the year under consideration was assessed at R.60,49,260/- under Section 143(3) of the Act read with Section 147 of the Act read with Section 144A of the Act. Separate penalty proceedings under Sections 271D and 271E of the Act are ordered to be initiated. It is the case of the petitioner that since there is no escapement of income represented in the form of asset, expenditure or entry amounting to or exceeding Rs.50 lakhs the invocation of the provisions of Section 149(1)(b) of the Act was uncalled for, hence the assessment order issued under Section 147 of the Act may be quashed. Section 149(1)(b) of the Act permits reopening of assessment by issuing notice under Section 148 of the Act after 3 years but not more than 5 from the end of relevant assessment year, if the information of escapement of income chargeable to tax amounts to or is likely to amount to fifty lakh rupees or more. Thus, the petitioner is seeking quashing of the assessment order passed under section 147 of the Act after participating in the assessment proceedings which were initiated vide Notice dated 30.03.2025 under section 148 of the Act. Such a submission if is accepted will lead to an abstruse scenario. The provision of Section 149(1)(b) of the Act permits reopening of assessment by using the expression if the income chargeable to tax amounts to or “is likely to

amount to” 50 lakhs. Thus, the actual ascertainment of escaped income chargeable to tax can only be determined on conclusion of the assessment, which may either more or less than the threshold limit of 50 lakhs. The amount so determined, on completion of assessment, if is found less than Rs.50 lakhs cannot dilute the notice issued under Section 148 of the Act. The reopening is premised only on information of income chargeable to tax has escaped assessment. The petitioner wants the assessment order under Section 147 of the Act to be quashed by going back to notice issued under Section 148 of the Act, which is an absurd thinking. The only alternate, which is open to the petitioner is to assail the assessment order passed under Section 147 of the Act is by way of filing a statutory appeal before the CIT(Appeals). The Apex Court in the case of **Chhabil Dass Agarwal (supra)** in context of alternative remedy of filing an appeal before CIT Appeals has held thus:

“ 19 Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20 In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of

Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. V/s. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case."

The Apex Court has permitted interference in writ petition filed under Article 226 of the Constitution in exceptional circumstances such as “where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice”. In the instant case, we do not find that such circumstances exist.

Thus, since the petitioner has an alternative efficacious remedy, the writ petitions fail, and the same are ***rejected***. The petitioner can avail the remedy by filing an Appeal before the CIT Appeals.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED