

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO.16538 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
		✓

JIGNESH RAMNIKLAL DOSHI

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2 RAJKOT

Appearance:

MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1

MAUNIL G YAJNIK(9346) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 20/01/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

- RULE.** Learned Senior Standing Counsel Mr. Maunil Yajnik waives service of notice of rule on behalf of the respondent - Department.
- At the outset, learned Senior Standing Counsel Mr. Maunil Yajnik has submitted that the issue raised in the present writ petition is squarely covered by the decision of this Court rendered in Special Civil Application No. 16615 of 2025 dated 05.01.2026. Hence, with the consent of the respective parties, the matter is taken up for final disposal today itself.
- The present petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the notice issued under Section 148 of the Income Tax Act, 1961 and consequent Assessment Order passed under Section 147 read with Section 143(3) of the Income Act, 1961 dated 18.05.2025 for the Assessment Year 2012-13.

4. The brief facts giving rise to the filing of the present writ petition are that the petitioner is engaged in the business of real estate and financing under the name and style of 'Mahavir Developers'. The petitioner had filed its return of income for the Assessment Year 2012-13 on 28.09.2012 declaring a total income of Rs.15,57,960/-. It is the case of the petitioner that additionally the petitioner falls under the purview of tax audit under Section 44AB of the Income Tax Act, 1961 (for short "the Act") and has submitted the audit report in Form 3CB-3CD. The petitioner thereafter filed its revised return of income on 19.03.2014 declaring total income of Rs.64,93,660/-.

4.1. It is further the case of the petitioner that initially the petitioner was selected for scrutiny through Computer Assisted Scrutiny Selection (CASS), pursuant to which an Assessment Order under Section 143(3) of the Act was passed on 12.03.2015 by accepting the return of income. Subsequently, the case of the petitioner was selected for reassessment vide order dated 19.06.2019 passed under Section 147 read with 143(3) of the Act.

4.2. It is the case of the petitioner that on 11.11.2022, a search and seizure operation was conducted by the Investigation Wing, Gandhidham in the case of Khavda Group of Gandhidham whereby, 40 premises including both the residential and business premises of the petitioner were recovered. In the said search, certain documents were found and seized by the respondent and further also recorded the statement of the petitioner.

4.3. Based on such information, reassessment proceedings were initiated and notice under Section 148 of the Act was issued on 31.03.2023 by the Income Tax Officer, Ward-1, Gandhidham. It is further the case of the petitioner that thereafter notice under Section 142(1) of the Act was issued on 06.07.2023. Subsequent thereto, the case of the petitioner was centralized and another notice under Section 142(1) of the Act was issued on 22.02.2024 by the respondent and in response to the same, the

petitioner filed its reply on 20.03.2024.

4.4. Pursuant thereto, the respondent issued notice dated 31.03.2024 stating that the seized materials were received from the office on 27.10.2023 and therefore, the limitation period for completion of assessment stood extended upto 27.09.2024 in terms of clause (xii) of Explanation 1 to Section 153 of the Act. Thereafter, several notices were issued to the petitioner calling for various details and documents.

4.5. On 30.07.2024, a show cause notice under Section 142(2A) of the Act was issued calling upon the petitioner to explain as to why the books of accounts should not be subjected to the special audit under the said provision. However, on 15.04.2025, the petitioner filed its return of income under Section 148 of the Act declaring return of income of Rs.64,93,660/-. In pursuance thereto, notice under Section 142(1) of the Act a detailed notice was issued on 29.04.2025 asking the petitioner to furnish several documents and also provide an explanation with regard to certain seized documents and loose papers. In response to the said notices, a detailed reply was filed by the petitioner vide letter dated 09.05.2025.

4.6. On 12.05.2025 another show cause notice was issued upon the petitioner calling upon him to show cause as to why addition of Rs.1,18,66,323 should not be made on the ground that the opening balance reflected in the cash book which was prepared on the basis of the data. The petitioner filed a detailed reply on 15.05.2025. However, without considering the reply filed by the petitioner, the respondent passed an order under Section 147 read with Section 143(3) of the Act on 18.05.2025 determining the assessed income of Rs.1,83,59,983/- after making addition of Rs.1,10,61,645/- on account of unexplained expenditure under Section 69C of the Act and Rs.8,04,678/- on account of undisclosed income. Hence, the petitioner is constrained to approach this Court by way of this petition.

5. Learned advocate Mr. Hardik Vora for the petitioner submitted that in the present case the year under consideration is Assessment Year 2012-13 which precedes the date of 01.04.2021, when significant changes to the provisions concerning reassessment came into effect. It is further submitted that for the reassessment proceedings relating to Assessment Years before the implementation of the Finance Act, 2021, the specific proviso to Section 149(1) (b) of the Act applies. As per the said proviso, no notice under Section 148 of the Act shall be issued at any time in case for the relevant Assessment Year beginning on or before 1st day of April, 2021, and if notice under Section 148 or under Section 153A or Section 153C of the Act could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of Section 149 or Section 153A or Section 153C of the Act, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

5.1. It is contended that the reassessment proceedings were initiated based on the documents pertaining to the petitioner which were discovered during the search conducted. Therefore, if the provisions prior to the amendments introduced by the Finance Act, 2021 are applied, Section 153A of the Act becomes relevant. Therefore, according to Section 153A(1) of the Act, any search conducted after 1st April, 2021 is no longer governed by that provision due to the legislative changes. Moreover, the first proviso to Section 149(1) of the Act specifies that for Assessment Years prior to 1st April, 2021, any reopening of assessment must adhere to the time limits and conditions under Section 153A of the Act as it existed before the enactment of Finance Act, 2021. Thus, reassessment initiated in connection with the search conducted on or after 1st April, 2021, the reassessment must not only comply with the prescribed time frames in Section 149 of the Act, but also fulfills the applicable conditions of Section 153A and 153C of the Act. Hence, the manner in which the period of six or ten years is required to be reckoned in respect of reopening of the

assessment for a period prior to six years and/or before the expiry of ten years from the relevant assessment years as contemplated under Section 153A of the Act, the period of ten years is required to be reckoned from the end of the assessment year relevant to the year in which the notice under Section 148 of the Act is issued. Thus, while placing reliance on the decision of this Court passed in Special Civil Application No. 16615 of 2025 dated 05.01.2026, it is urged that the impugned notice issued under Section 148 of the Act dated 31.03.2023 and consequent Assessment Order under Section 147 read with Section 143(3) of the Act dated 18.05.2025 for the Assessment Year 2012-13 may be quashed and set aside.

6. The writ petition is opposed by the learned Senior Standing Counsel Mr. Maunil Yajnik for the respondent and has submitted that the impugned notice as well as the Assessment Order do not require interference looking to the incriminating material found during the course of search action on the assessee on 11.11.2022. It is submitted that the petitioner was unable to prove the genuineness of opening cash balance by producing supporting documentary evidence. Thus, it is urged that in view of the gross concealment of the income and also unaccounted cash payment for expenditure, the action of the respondent in reopening the assessment does not call for any interference.

6.1. At this juncture, learned Senior Standing Counsel Mr. Maunil Yagnik has submitted that for the first time before this Court, the issue of limitation is raised even though the petitioner had an opportunity to raise the same before the concerned authority as he had participated in the proceedings. Hence, it is urged that the present writ petition may not be entertained.

7. We have heard the learned advocates appearing for the respective parties at length. The writ petition deserves to be allowed only on the sole reason as the impugned notice issued under Section 148 of the Act for

reopening on the basis of search travelling beyond the period of ten years. This Court while examining the provisions of Section 148 read with Sections 152 and 153A of the Act has in the judgment dated 05.01.2026 passed in Special Civil Application No. 161615 of 2025 has held thus :-

"8 The facts which are established from the pleadings are that a search action under Section 153A of the Act against the searched person was undertaken on 09.05.2024, which indubitably falls in the Financial Year 2024-25. The revenue found some incriminating material against the present petitioner and accordingly issued the impugned notices for reopening the assessment for the year 2015-16. The notice has been issued under Section 148 of the Act. With reference to the date of search, it is necessary to refer to the provisions of Section 152(3) of the Act, which read as under:

"Section 152(3)

"Where a search has been initiated under section 132 or requisition is made under section 132A or a survey is conducted under section 133A [other than under sub-section (2A)] on or after the 1st day of April, 2021 but before the 1st day of September, 2024, the provisions of section 147 to 151 shall apply as they stood immediately before the commencement of the Finance (No. 2) Act, 2024."

Thus, since the date of search falls within the period from the 1st day of April, 2021 to the 1st day of September, 2024, the provisions of Sections 147 to 151, as they stood prior to the Finance Act (No. 2), 2024, shall apply.

9. Section 149 (Old regime) of the Act reads thus:

"Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year, -

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

(i) an asset,

(ii) expenditure in respect of a transaction or in relation to an event or occasion, or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to

fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021."

7.1 Section 149(1)(b) of the Act refers to the limitation period of ten years, which has elapsed from the end of the "relevant assessment year". The relevant assessment year in the present case is 2015-16, which is prior to the cut-off date of 1st April, 2021, as specified in the first proviso. The link between Section 149 and Sections 153A and 153C of the Act is found in the first proviso to Section 149(1) of the Act. The expression "relevant assessment year" is explained under Explanation 1 to the fourth proviso to Section 153A(1). The first proviso to Section 149(1) of the Act bars the issuance of notice under Section 148 of the Act for the relevant assessment year beginning on or before 01st April, 2021, if a notice under Section 148 or Section 153A or Section 153C of the Act could not have been issued at that time on account of it being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of Section 149 of the Act or Section 153A or Section 153C of the Act. In the present case, the notice under Section 148 of the Act emanates from the search proceedings undertaken under Sections 132 / 132A of the Act, and hence the provisions of Sections 153A and 153C of the Act would get attracted, and the reassessment of the petitioner has to be examined by keeping in mind the limitation provided under Section 153C of the Act, which is *pari materia* to Section 153A of the Act.

At this stage, we may refer to the provisions of Section 153A(1)(b) and Explanation (1) to Section 153A of the Act, on which the learned advocates have premised their submissions. Section 153A(1)(b) and Explanation (1) to Section 153A of the Act read as under:

"SECTION 153A

Assessment in case of search or requisition.

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section

132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

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(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years):

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years

Provided also that no notice for assessment reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless-

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years,

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years, and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017

Explanation 1 *For the purposes of this sub-section, the expression*

"relevant assessment year shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made."

7.2 The provisions of Sections 153A / 153C of the Act find place in the proviso to Section 149 of the Act and, hence, the limitation as provided in Sections 153A / 153C of the Act gets triggered upon the initiation of assessment proceedings emanating from a search under Sections 132 / 132A of the Act. We may, at this stage, mention that the Delhi High Court as well as the Madras High Court has already considered the implications of Explanation (1) to Section 153A of the Act to the limitation and the expression "relevant assessment year" used therein in Explanation (1) to Section 153A of the Act. The Delhi High Court, in the case of **Ojus Medicare (supra)**, after considering an array of judgments of other High Courts as well as of the Supreme Court and upon a threadbare consideration and analysis of the statutory provisions of Sections 153A, 148 and 149 of the Act, has held thus:

"88 Section 153A replicates the basis on which the six AYs' are to be identified and computed with the solitary distinction being that in the case of the searched person, the six AYs' are liable to be computed from the AY pertaining to the FY in which the search was conducted. The starting point for the purpose of identifying the six AYs' in the case of section 153A would thus turn upon the year of search as opposed to the handover of material which is spoken of in the First Proviso to section 153C. If one were to therefore assume that a search took place on a person between 01 April 2021 to 31 March 2022, the pertinent AY would become AY 2022-23 and the corresponding six AYs' would be as follows:

<i>Computation of the six-year block period as provided under section 153C of the Act</i>	<i>No of years</i>
AY 2021-22	1
AY 2020-21	2
AY 2019-20	3
AY 2018-19	4
AY 2017-18	5
AY 2016-17	6

89. That takes us then to the issue of identifying the "relevant assessment year" for the purposes of computing the ten year block. Explanation 1 to section 153A specifies the manner in which the entire ten AY period is to be computed. While the computation of six AYs follows the position as enunciated and identified above, Explanation I prescribes that the ten AYs' would have to be computed from the end of the AY relevant to the FY in which the search was conducted or requisition made **The ten AY period**

consequently is to be reckoned from the end of the AY pertaining to the previous year in which the search was conducted as distinct from the preceding year which is spoken of in the case of the six relevant AYs.

90. Viewed in that light, and while keeping the period of 01 April 2021 to 31 March 2022 as the constant, the relevant AY would be AY 2022-23. The ten AYs would have to be computed from 31 March 2023 with the said date indubitably constituting the end of the AY relevant to the previous year of search. Viewed in light of the above, the block period of 10 AYs would be as follows.-

<i>Computation of the six-year block period as provided under section 153C read with Section 153A of the Act</i>	<i>No of years</i>
AY 2022-23	1
AY 2021-22	2
AY 2020-21	3
AY 2019-20	4
AY 2018-19	5
AY 2017-18	6
AY 2016-17	7
AY 2015-14	8
AY 2014-15	9
AY 2013-14	10

91 Tested on the aforesaid precepts, it would be manifest that AY 2022-23 would form the first year of the block of ten AYs' terminating in AY 2013-14. We, in this regard also bear in consideration the following instructive passages as appearing in the decision handed down by a learned Judge of the Madras High Court in A.R.Safiullah. We deem it appropriate to extract the following paragraphs from that decision:-

"9 Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date i.e. 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows:

<i>1st Year</i>	<i>2019-20</i>
<i>2nd Year</i>	<i>2018-19</i>

3 rd Year	2017-18
4 th Year	2016-17
5 th Year	2015-16
6 th Year	2014-15
7 th Year	2013-14
8 th Year	2012-13
9 th Year	2011-2012
10 th Year	2010-2011

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10. In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the Finance Act, 2017 intended to bring in four more years over and above the six years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt."

In our considered opinion, the decision in A.R Safullah correctly expounds the legal position and the interpretation liable to be accorded to the identification of the ten AYs which are spoken of in sections 153A and 153C.”

7.3 Thus, it is precisely held hereinabove that the statute prescribes different modes of computation for six years and ten years. We reiterate that the provisions of Section 153A(1)(b) of the Act stipulate that the Assessing Officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which the search is conducted. However, the ten assessment year period, consequently, is to be reckoned from the end of the assessment year pertaining to the previous year in which the search was conducted, as distinct from the preceding year which is spoken of in the case of the six relevant assessment years. Thus, the contention with regard to the computation of six years as well as ten years under the provisions of Section 153A of the Act has already been gone into by the Delhi High Court as well as the Madras High Court, and we have no convincing reason to take a divergent view from the view expressed hereinabove.”

8. Applying the aforesaid computation to the facts of the present case, the date of search as 11.11.2022 during the Financial Year 2023-24, the Assessment Year will become the first Assessment Year, in wake of the fact that notice was issued in the end of the Assessment Year on 31.03.2023, and the tenth Assessment Year would be 2014-15. In the instant case, the impugned action of reopening assessment is 2012-13 which would be 12th year and hence the action of the respondent is contrary to the provisions of Section 153A of the Act read with Sections 148 and Section 149 of the Act.

9. We do not subscribe to the submissions advanced by the learned Senior Standing Counsel Mr. Yagnik objecting to the submission of limitation of beyond 10 years on the ground that the same is raised for the first time before this Court, since it is settled legal precedent, a pure question of law relating to interpretation of statutory interpretation, and its violation, which has direct bearing on the legal claim can be raised at any stage. In the present case, the revenue has erroneously and in violation of the statutory provisions of Section 153A of the Act, has calculated the period and has tried to re-open the assessment which is beyond its purview. Thus, such an issue/submission can always be raised

before this Court even if the same is not raised before the authorities during the assessment proceedings since it is expected from the Assessing Officer to be alive to the limitation prescribed in the provision of Section 153A of the Act. It is not expected that the Assessing Officer would be ignorant in computation of ten years as required under Section 148 read with Sections 149 and 153 of the Act and go beyond the scope of assessment years. Hence, this Court can always delve into the same while exercising its inherent power under Article 226 of the Constitution of India.

10. For the foregoing reasons and in light of the aforesaid decision of this Court, the present writ petition succeeds. The impugned notice as well as the Assessment Year are hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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