

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2083 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No
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ASHAPURA TRANSPORT CO

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 2(1), RAJKOT

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Appearance:

MR TUSHAR HEMANI SENIOR ADVOCATE MS VAIBHAVI K PARIKH(3238)
for the Petitioner(s) No. 1

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

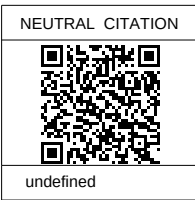
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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI**Date : 25/08/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr.
Tushar Hemani for the petitioner and



learned Senior Standing Counsel Mr. Karan Sanghani for the respondent.

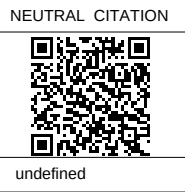
2. Having regard to the controversy involved, with the consent of learned advocates for the respective parties, the matter is taken up for hearing.

3. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Karan Sanghani waives service of notice of rule on behalf of the respondent.

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

"a) quash and set aside the impugned notice as well as the impugned order at ANNEXURE "A (Colly.)" to this petition;

(b) pending the admission, hearing and final disposal of this



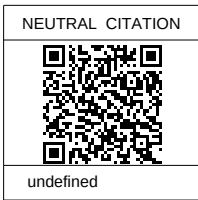
petition, stay the implementation and operation of the impugned notice as well as impugned order at ANNEXURE "A (Colly.)" to this petition and stay further proceedings for Assessment Year 2017-18;

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) provide for the cost of this petition."

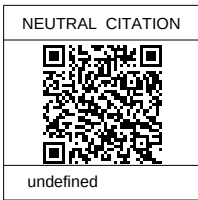
5. Brief facts of the case are that the petitioner partnership firm is carrying on the business of transportation and handling of goods mainly meant for civil supply and these services are provided to various Government agencies like Food Corporation of India, Central Warehousing Corporation, Gujarat State Civil Supply Corporation Limited, etc.

6. It is the case of the petitioner that the petitioner was providing services to



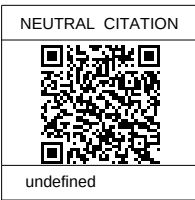
government agencies only and payments against services so rendered were received through banking channel only and no cash is involved and the payments are received after deduction of tax at source. Moreover, major portion of the expenses of the petitioner is in relation to payment of transporters/truck owners-operators and for such payment, the petitioner is required to maintain cash on hand.

7. The respondent issued show cause notice dated 26.05.2022 under clause (b) of section 148A of the Income Tax Act, 1961 (For short "the Act") calling upon the petitioner to show cause as to why notice under section 148 of the Act should not be issued for Assessment Year 2017-2018 for reopening of the assessment as



there were significant financial transactions during the year under consideration in the form of cash deposits during demonetization period to the tune of Rs.1,08,11,007/- .

8. The petitioner filed a detailed reply to the show cause notice on 08.06.2022 contending that the petitioner had actually deposited Rs.1,02,31,000/- during demonitisation period and not Rs.1,08,11,007/- as the petitioner was having cash on hand in form of SBN available at the close of 08.11.2016 generated out of the business activities. The petitioner also filed audit report, relevant bank account statement for the entire year and the cash book. The petitioner also informed the respondent that cash deposits have been duly

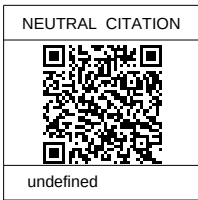


explained to Assistant/Deputy director of Income Tax (Investigation)-II Rajkot from time to time by filing reply and submissions were made in response to the summons issued under section 131A of the Act.

9. The respondent however by the impugned order dated 30.07.2022 passed under section 148A(d) of the Act came to the conclusion that it is a fit case to reopen the assessment as there was escapement of income chargeable to tax to the tune of Rs.1,08,11,007/- and also issued notice dated 30.07.2022 under section 148 of the Act.

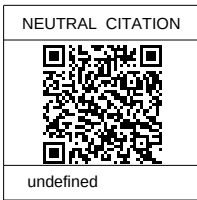
10. Being aggrieved, the petitioner has preferred the present petition.

11. Learned Senior Advocate Mr. Tushar



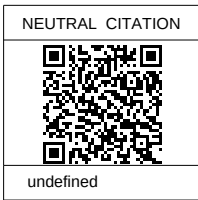
Hemani for the petitioner submitted that there is no escapement of income as the petitioner was having cash balance in the cash book which is duly audited and return was filed by the petitioner on the basis of audited books of accounts.

12. It was further submitted that the respondent Assessing Officer while passing the impugned order under section 148A(d) of the Act has recorded the finding that "a prudent business man will never keep such huge cash on hand as idle money at business premises" and came to the conclusion that it is a fit case for reopening the assessment. It was therefore, submitted that the respondent Assessing Officer could not have arrived at satisfaction from the point of view of the prudent business man because as per



the business activities of the petitioner, the petitioner was required to keep huge cash balance to make payment to transporters so as to provide services to Government agencies for transportation of the goods.

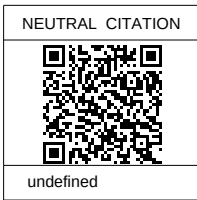
13. It was further submitted that the reasons assigned by the respondent to come to the conclusion for reopening of the assessment is without any basis as there is no nexus between the information available with the respondent Assessing Officer and alleged escapement of income, more particularly, in view of the fact that the Investigation Wing of the department has already issued summons to the petitioner which were duly complied with by the petitioner by letters dated 18.04.2017, 05.05.2017, 07.03.2018 and 04.03.2021 which were also produced before



the respondent Assessing Officer. It was therefore, submitted that the impugned order as well as notice are liable to be quashed and set aside.

14. On the other hand, learned Senior Standing Counsel Mr. Karan Sanghani for the respondent submitted that it is not in dispute that the petitioner had deposited cash of more than Rs. 1 crore in the bank account during the demonitisation period and there is no sufficient explanation given by the petitioner for such huge deposit or any comparison statement is given by the petitioner in relation to earlier years for maintaining such huge cash.

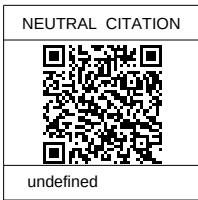
15. It was therefore, submitted that the



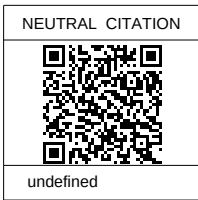
respondent Assessing Officer was justified in coming to the conclusion that it is a fit case to reopen the assessment on the basis of such information received from the Director of Investigation who has provided information after making inquiry with the petitioner.

16. It was submitted that the petitioner has an alternative efficacious remedy to challenge the order, if any, passed against the petitioner in reopening proceedings before the CIT(Appeals) and therefore no interference may be made while exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

17. Having heard the learned advocates for the respective parties and considering the



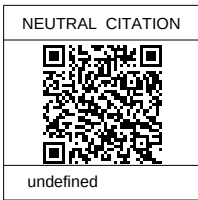
facts of the case and on perusal of the impugned order passed by the respondent Assessing Officer, it appears that there is no information available on record to suggest that the petitioner had deposited cash of Rs.1,08,11,007/- during the demonitisation period which is not forming part of the available cash balance. The respondent Assessing Officer has categorically recorded that as per the cash book furnished by the petitioner, it was clear that the petitioner was holding large amount of cash in hand. However, the Assessing Officer was of the view that the petitioner being a prudent business man would never keep such huge cash on hand as idle money at the business premises and therefore, arrived at the conclusion that the petitioner failed to provide any



justification for requirement of such huge cash on hand.

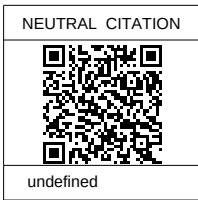
18. It also appears that the respondent Assessing Officer has brushed aside the replies filed by the petitioner in response to the summons issued under section 131A of the Act issued by Assistant/Deputy Director of Income Tax (Investigation)-II Rajkot by observing that the petitioner did not submit complete details required for verification of source of cash deposited during demonitisation.

19. On the basis of reply filed by the petitioner, it appears that the petitioner has provided audited books of accounts, bank statement and entire cash book along with reply in addition to replies filed by the petitioner in response to the summons



issued by Assistant/Deputy Director of Income Tax (Investigation)-II Rajkot. However, respondent Assessing Officer without considering the same and only on the information that the petitioner has deposited huge cash amount in the bank account during the demonitisation period, had come to the conclusion that it is a fit case for reopening the assessment.

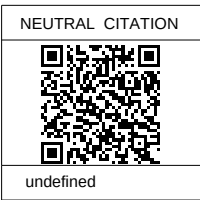
20. In such circumstances, we are of the opinion that there is no foundational fact available so as to enable the respondent Assessing officer to assume jurisdiction to reopen the assessment as the information made available to the respondent Assessing Officer by the Investigation wing has not resulted into any nexus with material available on record so as to come to the prima facie



conclusion that it is a fit case to reopen the assessment on account of escaped income of the cash deposited during the demonitisation period.

21. It also appears from the record that the respondent Assessing Officer has failed to consider that there was sufficient cash balance in the books of account and there is nothing on record to suggest that such cash balance has cropped up only on 8.11.2016 on the eve of demonitisation period.

22. Therefore, considering the facts of the case, we are of the opinion that the respondent Assessing Officer could not have assumed jurisdiction to reopen the assessment and accordingly, the petition succeeds and is hereby allowed. Impugned



order dated 30.07.2022 passed under section 148A(d) of the Act is hereby quashed and set aside. Consequentially, the impugned notice under section 148 of the Act of even date is also quashed and set aside.

23. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR