



# **GUJ HC: Proceedings U/s 148 Of The Act Cannot Be Initiated To Review The Earlier Stand Adopted By The Assessing Officer In The Scrutiny Assessment Order**

## **Facts in brief**

For the Assessment Year 2018-19 the petitioner an individual filed his return of income declaring total income of Rs. 27,26,64,000/-. The case of the individual assessee (the petitioner) was selected for scrutiny assessment under the provisions of section 143(3) of the Act. Pursuant to the initiation of the proceedings, notice u/s142(1) of the Act was issued for determining the taxable capital gain, more particularly on sale of shares. The petitioner responded to the said notices on various dates by giving complete particulars about the sale of shares and resultant capital gain working including the claim u/s 54F of the Act.

Order u/s 143(3) of the Act was passed by the concerned AO on 12.03.2021 accepting the contentions of the petitioner. Thereafter, notice dated 21.03.2022 was issued u/s 148A of the Act initiating reassessment proceedings. The income of the petitioner was proposed to be reassessed on the ground that there was a change in the control consequent to change in the directors of the Company and capital gain income on the sale of shares should have been treated as business income. The AO took the view that there was escapement of income on that count. The petitioner filed response to the notice by way of reply dated 28.03.2022 explaining as to why the notice dated 21.03.2022 was not correct and giving details of the capital gain. The AO passed an order dated 07.04.2022 u/s 148A(d) of the Act along with notice u/s 148 of the Act of the same date which were impugned in the writ petition.

Aggrieved by the action of AO the petitioner filed a writ petition before the Honourable High Court Gujarat assailing the validity of order dated 07.04.2022 passed u/s 148A(d) of the Act and notice of reopening issued u/s 148 of the Act dated 07.04.2022 for the Assessment Year 2018-19.

## **Contentions of the Petitioner before the High Court**

It was submitted before the High Court that

- The issues which were stated in the reassessment proceedings were part of the assessment proceedings and requisite details in relation to computation of correct capital gain in relation to sale of shares and claim u/s 54F of the Act were submitted and duly examined and accepted by the AO.
- Impugned order u/s 148A(d) of the Act dated 07.04.2022 and notice u/s 148 of the Act of the same date were wholly perverse and the same were required to be quashed in limine

issuance of the impugned notices was not premised upon any new information flagged in the system but merely an attempt to review the information which was already on record and examined during the scrutiny assessment proceedings. Therefore, this was a case pertaining to clear issue of change of opinion.



### **Contentions from Revenue's side raised before the High Court**

- In the present case the information had been flagged on the Insight Portal under the category of 'High risk CRUI/VRU cases' for the Financial Year 2017-18 (A.Y. 2018-19). The information flagged on the Insight Portal was in accordance with the risk management strategy formulated by the Board and the same fell under the definition of clause (i) to Explanation 1 to section 148 of the Act which became effective on 01.04.2021.
- The approval of the specified authority was obtained before issuing show cause notice dated 21.03.2022 to the petitioner and the petitioner had been provided an opportunity of being heard and was called upon to show case as to why notice u/s 148 of the Act be not issued in his case.

### **High Court decision**

The reasons recorded in the order issued u/s 148A(d) of the Act were already considered by the Assessing Officer in the Assessment Order.

The AO did not have the power to review his own assessment arrived at during the original assessment.

The petitioner had provided all the information which was considered by the respondent.

It is settled law that the proceedings u/s 148 of the Act cannot be initiated to review the earlier stand adopted by the AO. The AO cannot initiate reassessment proceedings to have relook with the documents filed in the original assessment proceedings.

The power to reexamine cannot be exercised from time to time.

The impugned order passed u/s 148A(d) of the Act and the notice of same date issued u/s 148 of the Act were quashed and set aside.

### **Citation:**

Dignesh Pramukhlal Patel TS-354-HC-2026(GUJ)

### **Our Comment**

Honourable High Court at Gujarat has drawn a clear distinction between a case where the assessee has failed to provide material/ information during the assessment and which is flagged by the audit party as against a case where all information provided by the assessee has not been not considered/ commented upon by the AO in the assessment order resulting in a subsequent audit objection.

The latter case cannot be said to be a matter of reassessment as it has the effect of reconsideration of the same material to arrive at a different conclusion which is not permitted. Audit objection in such a situation cannot expand or change the nature of power to a power review.

It is however seen that the reopening was sought on the premise that sale of shares by the individual-assessee had resulted in change in control of the company consequent to change in directors of the company and therefore the resultant income was assessable under the head business. How this aspect was examined and addressed either in the original assessment proceedings or by the High Court in the present appeal is not coming out from the order of the High Court. Whether an opinion on this aspect was formed in the first instance, on the basis of information available in that regard, would have been a material factor.