

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 9176 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

| | | |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
| | yes | |

SWAGAT INFRASTRUCTURE PRIVATE LIMITED**Versus****THE DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 1(4),
AHMEDABAD****Appearance:****MR TUSHAR HEMANI with MS VAIBHAVI K PARIKH(3238) for the
Petitioner(s) No. 1****MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1****NOTICE SERVED BY DS for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 16/12/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. Since a very short issue is involved, the matter is taken up for final hearing. We have heard learned advocates appearing for the respective parties.

2. **RULE.** Learned Senior Standing Counsel Mr. Varun K. Patel waives service of notice of rule on behalf of the respondent authority.

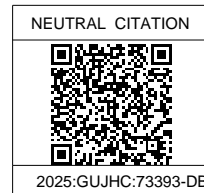
3. By way of this writ petition, the petitioner has prayed to quash and set aside the impugned Assessment Order dated 30.04.2024 as well as the demand Notice dated 30.04.2024 for the Assessment Year 2011-12.



4. At the outset learned senior advocate Mr.Tushar Hemani appearing for the petitioner has submitted that proceedings under Section 153(B) of the Income Tax Act, 1961 (for short, 'IT Act') govern the proceedings under Section 153(C) of the IT Act. In the present case, the impugned assessment order passed by the respondent is clearly barred by limitation and hence, without any jurisdiction.

4.1 It is contended that in the present case the search which was undertaken in the case of a third party namely H.N.Safal Group on 04.09.2013, has culminated into re-assessment of tax of the present petitioner. It is submitted that relevant materials were gathered during the search and the satisfaction note was also drawn by the Assessing Officer of the person searched, which was received by the respondent authority on 28.08.2017 in the Financial Year 2017-18 / Assessment Year 2018-19 and as per the first proviso under Section 153B of the IT Act, the last date of framing the assessment was on 31.12.2018. However, it is submitted that since the matter was *sub judice* before this Court and interim relief was granted in favour of present petitioner on 20.12.2018, whereby the notice under Section 153(C) was challenged, the limitation period of eleven days for framing the assessment was remaining, as on the date of grant of such interim relief.

4.2 It is submitted that the issue came to be settled in favour of the Income Tax Department by the Supreme Court vide judgment dated 06.04.2023 passed in the case of ITO vs. Vikram Sujitkumar Bhatia, (2023) 453 ITR 417 (SC). Pursuant to the said decision, the respondent was again authorised to frame the assessment in the case of the present petitioner. It is submitted that as per the provisions of Section 153 B of the IT Act, if the remaining period of limitation is less than sixty days,



the same stands extended for another sixty days for the purpose of undertaking the assessment proceedings. It is submitted that in the present case, the assessment order was supposed to have been passed on 05.06.2023, however, the same has been passed on 30.04.2024, as the period is extended for a period of sixty days. While referring to the contents of the affidavit-in-reply dated 21.04.2025, it is submitted that the order of the Supreme Court dated 06.04.2023 was received by the office of the jurisdictional Assessing Officer on 16.05.2023 and even then also the same would be beyond the period of limitation prescribed under the Act. It is submitted that the respondent authority cannot place reliance on the provisions of Section 153(6)(i) of the IT Act and extend the period of limitation for a period of one year for justifying the Assessment Order passed on 30.04.2024. Thus, it is urged that the impugned order may be quashed and set aside.

5. In response to the aforesaid submissions, learned Senior Standing Counsel Mr. Varun K. Patel for the respondent authority, while placing reliance on the affidavit-in-reply has submitted that the limitation will be governed by the provisions of Section 153(6)(i) of the IT Act. It is submitted that the order of the Supreme Court was received on 16.05.2023 by the jurisdictional Assessing Officer and as per the said provisions, the Assessment Order has to be passed before the expiry of twelve months from the end of the month, in which such order is received. Accordingly, after the reassessment came to be completed on 30.04.2024 before the expiry of the limitation period of twelve months the order has been passed. It is further submitted that the limitation in the present matter is not governed by the provision of Section 153 (B) of the IT Act but rather governed by the provisions of Section 153(6)(i) of the IT Act. Thus, it is urged that the present writ petition may not be entertained.

6. We have examined the rival submissions and the provisions as pointed out before this Court. The aforementioned facts with regard to the proceedings under Section 153(C) of the IT Act for the AY-2011-12, against the present petitioner which emanates from the search of the third party H.N.Safal are not in dispute. From the pleadings as well as the contents of the affidavit filed by the petitioner, it is established that the re-opening of the assessment has been undertaken in view of the search action which took place in the case of third party i.e. H.N. Safal group on 04.09.2013. The satisfaction note was drawn by the A.O of the person searched on 18.08.2017. The relevant material was sent to the A.O of the petitioner, which was received on 28.08.2017.

7. At this stage, we may refer to the proviso of Section 153 (B) of the IT Act, the same reads as under:

SECTION 153B : Time limit for completion of assessment under section 153A.

(1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,-

(a) in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets

seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

8. It is not disputed by the respondent that the last date for framing the assessment was 31.12.2018, for F.Y. 2017-18. i.e nine months from 01.04.2018 (ending of F.Y 2017-18) as per the first *proviso* of Section 153B(1). However, due to interim relief granted by this Court dated 20.12.2018 in favour of the petitioner, when he assailed the notice under section 153 of the Act, only eleven days were remaining for framing the assessment. Ultimately, the matter reached upto the Supreme Court and the Supreme Court decided the same on 06.04.2023 in favour of respondent authority in case of **Vikram Sujitkumar Bhatia (supra)**. The said order was received by the jurisdictional Assessing Officer on 16.05.2023.

9. At this stage, it would be apposite to refer to the *proviso* to the explanation under sub-section (9) of Section 153 of the Act, which reads thus:-

“Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:”

10. Thus, the period of limitation is required to be extended for sixty days as there were only eleven days left for passing Assessment Order, when the interim order dated 20.12.2018 was passed by this Court in the writ petition challenging the notice under Section 153 C of the Act, in the case of present petitioner. Accordingly, if the necessary calculation is done and if the sixty days period of limitation is added the limitation would stand extended to 05.06.2023 reckoned from 06.04.2023 i.e. the

decision of the Supreme Court. Admittedly, the impugned Assessment Order was passed on 30.04.2024. Even if, the date of receipt of the order of the Supreme Court by the jurisdictional Assessing Officer on 16.04.2023 is considered, then also the Assessment Order passed on 30.04.2024 would still cross the limitation period. The respondent authority in order to justify their action and passing of the Assessment Order within a period of limitation has placed reliance on provisions of Section 153 (6)(i) of the I T Act the same reads as under:-

“Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3), (5) and (5A), be completed— (i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be;”

11. However, the provisions of Section 153 (6) (i) of the Act cannot be read into isolation, but has to be read in conjunction with the main provision of Section 153 of the Act which stipulates as under:-

“(1) No order of assessment shall be made under Section 143 or Section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:”

12. Therefore, reliance placed by the respondent on the provisions of Section 153(6)(i) of the Act to encompass the Assessment Order dated 30.04.2024 within a limitation period of 12 months as per the said provisions is misconceived. The same would be only applicable to the general assessment proceedings under Section 143 or Section 144 of the



IT Act and not to the provision of Section 153C of the IT Act, as they are explicit provisions governing the search proceedings emanating from the provision of Section 132 of the IT Act. These provisions are distinct and the legislature has prescribed specific limitations period for undertaking assessment.

13. Accordingly, the writ petition stands allowed. The impugned Assessment Order dated 30.04.2024 as well as the demand notice dated 30.04.2024 for the Assessment Year 2011-12 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

Radhika/2