NEUTRAL CITATION
undefined

Reserved On : 15/10/2026
Pronounced On : 23/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8482 of 2022

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

==========

Approved for Reporting	Yes	No
	✔	

==========

RITABEN ARVINDBHAI PATEL
Versus
THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 3, SURAT

==========

Appearance:
MR TUSHAR HEMANI, SENIOR ADVOCATE WITH
MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MR RUTVIJ PATEL AND
MR KARAN G SANGHANI(7945) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. By way of the present writ petition, the petitioner has challenged the order dated 01.04.2022 passed under Section 148A(d) and the notice dated 01.04.2022 issued under Section 148 of the Income-tax Act, 1961 (for short, “the Act”), for the Assessment Year 2018-19, on the ground that both are without jurisdiction.

BRIEF FACTS :

2. The present petition has been filed by an individual who, along with other co-owners, sold a parcel of land bearing Block

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

No.633/B, situated at Village Vav, Taluka Kamrej, District Surat. The petitioner held a 16.66% share in the land and, according to her, received an amount of Rs.8,43,250/- towards her share of the sale consideration.

3. The respondent issued a show-cause notice dated 19.03.2022 under clause (b) of Section 148A of the Act, calling upon the petitioner to furnish details of the land transactions.

4. It is pertinent to note that the show-cause notice emanated from a survey action undertaken under Section 133A of the Act at the premises of M/s.Saral Infra, a third party, on 18-19.04.2019, during which several incriminating documents, diaries, notebooks, etc., were impounded.

5. During the survey action, the statement of Mr.Sunilbhai M. Patel was recorded under Section 131 of the Act, wherein he was confronted with loose papers containing certain notings relating to transactions concerning lands bearing Block Nos.633/A, 633/B and 633/K, situated at Village Vav.

6. Accordingly, the respondent adopted the consideration mentioned in the impounded material and computed the alleged on-money received in relation to the land in question.

7. An amount of Rs.97,54,796/- was computed in the hands of the buyers, whereas an amount of Rs.1,17,68,296/- was computed in the hands of the sellers.

8. On the basis of the impounded material and the statement of Mr.Sunilbhai M. Patel, the respondent formed an

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

opinion that on-money amounting to Rs.1,17,68,296/- had been received in respect of the sale of the land in question. The respondent accordingly worked out the petitioner's share in the alleged on-money at Rs.29,42,074/-, which was proposed to be added to her total income.

9. The petitioner furnished a detailed reply to the show-cause notice vide letter dated 28.03.2022, clarifying her position with regard to the sale of the land in question.

10. By an order dated 01.04.2022 passed under Section 148A(d) of the Act, the respondent concluded that income chargeable to tax had escaped assessment and, accordingly, held that it was a fit case for issuing a notice under Section 148 of the Act.

11. Accordingly, a notice under Section 148 of the Act was also issued on 01.04.2022, which is also under challenge in the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

12. At the outset, learned Senior Advocate Mr.Hemani submitted that the impugned notice under Section 148 of the Act had been issued without obtaining the sanction of the competent authority and was, therefore, without jurisdiction.

13. It was submitted that the relevant assessment year ended on 31.03.2019 and that the period of three years prescribed under Section 151(i) of the Act expired on 31.03.2022, whereas, impugned order under Section 148A(d)

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

and the notice under Section 148 of the Act were both issued on 01.04.2022, after the expiry of the period of three years. Therefore, in terms of Section 151(ii) of the Act, prior approval was required to be obtained from the Principal Chief Commissioner of Income Tax or the Principal Director General or, where there was no such authority, the Chief Commissioner of Income Tax or the Director General, as the case may be. However, the approval in the present case was granted by the Principal Commissioner of Income Tax (Central), Surat, who was the specified authority under Section 151(i) of the Act. Accordingly, it was contended that the sanction granted by an authority not competent under the applicable provisions of the Act rendered the impugned proceedings without jurisdiction.

14. It was submitted that the proviso to Section 151 of the Act, inserted by the Finance Act, 2023, with effect from 01.04.2023, could not be applied retrospectively to the sanction granted on 01.04.2022. It was further submitted that, prior to the insertion of the said proviso, Section 151 of the Act prescribed a clear distinction between the competent specified authorities, depending upon whether the period elapsed from the end of the relevant assessment year was three years or less, or more than three years. The provisos to Section 149(1) of the Act, providing for the exclusion or extension of the period of limitation, operated for the purposes of computing the limitation under Section 149 of the Act. The said provisions could not be imported into Section 151 of the Act in the absence of any express statutory provision to that effect. The insertion of the proviso to Section 151 by the Finance Act, 2023 was, therefore, a substantive amendment affecting the

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

jurisdiction of the authority competent to grant sanction and could not be applied to proceedings initiated prior to 01.04.2023.

15. It was further submitted that the legislative history of Section 151 and the provisions of the Finance Act, 2023 clearly demonstrated that Parliament had consciously made the amendment effective from 01.04.2023. The Memorandum explaining the provisions of the Finance Bill, 2023, the Notes on Clauses and Circular No.1/2024 dated 23.01.2024, issued by the Central Board of Direct Taxes, specifically indicated the effective date of the amendment. It was submitted that, wherever the legislature intended to give retrospective effect to an amendment, it expressly provided for the same. In the absence of any such indication in respect of the proviso to Section 151 of the Act, the same could not be construed as operating retrospectively. Reliance was placed on the decisions of the Supreme Court in the case of CIT vs. Vatika Township (P.) Ltd., [(2014) 271 CTR 1 (SC)], and Sedco Forex International Drill Inc. vs. CIT, [(2005) 12 SCC 717], in support of the proposition that an amendment brought into force from a specified date must ordinarily be construed prospectively, particularly where its retrospective application would affect accrued rights or alter the existing legal position.

16. It was submitted that Section 149 of the Act deals with the limitation for issuance of a notice under Section 148 of the Act, whereas Section 151 of the Act deals with the jurisdiction of the specified authority competent to grant prior approval for the issuance of such notice. In this regard, reliance was placed on the decision of the Supreme Court in the case of Union of

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

India vs. Rajeev Bansal, [(2024) 469 ITR 46 (SC)], particularly paragraphs 74 and 76 thereof, to contend that the jurisdiction of the specified authority is directly correlated with the time elapsed from the end of the relevant assessment year. It was submitted that the period of three years was required to be computed with reference to the date on which the sanction was granted and the notice was issued, and that the exclusions provided under Section 149 could not be applied for determining the competent authority under Section 151 as it stood on 01.04.2022. It was further submitted that the subsequent insertion of the proviso to Section 151 was itself indicative of the fact that, prior to such amendment, there was no statutory provision permitting the exclusions under Section 149 to be taken into account for determining the specified authority under Section 151 of the Act.

17. In support of his submissions, learned Senior Advocate Mr.Hemani placed reliance on the decisions of the Bombay High Court in the case of Vodafone Idea Ltd. vs. DCIT, [(2024) 300 Taxman 364 (SC)], Agnello Oswin Dias vs. ACIT, [2024] 161 taxmann.com 16 (Bom.), Purnima Jitendra Navsariwala vs. ITO, [Writ Petition No.7 of 2024, decided on 05.03.2024], Mystique Media (P.) Ltd. vs. ITO, [2026] 185 taxmann.com 963 (Bom.), and Skypak Travels (P.) Ltd. vs. ITO, [2025] 481 ITR 175 (Telangana), as well as the decision of the Telangana High Court in Deloitte Consulting India (P.) Ltd. vs. Assessment Unit, NFAC. It was submitted that the aforesaid decisions have considered the effect of the proviso inserted in Section 151 by the Finance Act, 2023, and it is held that the amendment is prospective in nature and could not be applied to sanctions

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

granted prior to 01.04.2023. It was further submitted that the facts of the present case stood on a better footing, inasmuch as the show-cause notice under Section 148A(b) of the Act was issued on 19.03.2022, the petitioner submitted her reply on 28.03.2022, and the sanction was granted by the Principal Commissioner of Income Tax on 01.04.2022, after the expiry of the period of three years.

18. Learned senior advocate Mr.Hemani further placed reliance on the decisions relied upon by the Revenue, including Dhanraj Govindram Kella vs. ITO (2025) 480 ITR 612 (Guj), Union of India vs. Ashish Agarwal, (2023) 1 SCC 617, CIT vs. Gold Coin Health Food (P.) Ltd. (2008) 9 SCC 622, K.P. Varghese vs. ITO (1981) 4 SCC 173, Manjula vs. D.A. Srinivas (2013) 5 AIR Kant R 486, Giriraj Commercial (P.) Ltd. Vs. Union of India, [2024] 169 taxmann.com 168 (Cal.) and Abhinav Jain vs. ITO, 2026 LLBiz HC (DEL) 372. It was submitted that the decision in the case of ***Rajeev Bansal (supra***) did not decide the question of the retrospective applicability of the proviso to Section 151 inserted with effect from 01.04.2023. It was further submitted that the principle laid down in the case of ***Gold Coin Health Food (P.) Ltd. (supra***) could not be applied mechanically, as the nature and effect of the amendment had to be examined to determine whether it was clarificatory or substantive. In the present case, the amendment altered the competent authority for granting sanction and, therefore, affected jurisdiction. The subsequent amendment could not validate a sanction that had been granted by an authority lacking jurisdiction on the date of such sanction.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

19. It was submitted that, as on 01.04.2022, more than three years had elapsed from the end of the relevant assessment year and that the competent specified authority was the authority contemplated under Section 151(ii) of the Act. Since the sanction was granted by the Principal Commissioner of Income Tax (Central), Surat, the mandatory jurisdictional requirement under Section 151 of the Act was not satisfied. It was, therefore, urged that the proviso to Section 151 of the Act, having been inserted with effect from 01.04.2023, could not be applied retrospectively to validate the impugned sanction and that the order dated 01.04.2022 passed under Section 148A(d) and the notice dated 01.04.2022 issued under Section 148 of the Act deserved to be quashed and set aside as being without jurisdiction.

20. On merits, it is contended by learned Senior Advocate Mr.Hemani that the impugned action of the respondent is liable to be quashed and set aside, since there is no live link between the petitioner and the incriminating material found during the survey action under taken with the third party. He has pointed out the loose paper chits referred in the impugned order, and has contended that it does not bear any name, and the petitioner is roped in the reassessment on the basis of one Mr.Sunil Patel, to whom the petitioner has not sold the land, and she is not at all connected with him.

SUBMISSIONS ON BEHALF OF THE REVENUE :

21. Learned Senior Standing Counsel Mr.Karan Sanghani appearing along with learned Senior Standing Counsel Mr.Rutvij Patel for the respondent-Revenue, opposed the submissions

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

advanced by learned senior advocate Mr.Hemani on behalf of the petitioner and submitted that Section 149 of the Act prescribes the period of limitation for the issuance of a notice under Section 148, whereas Section 151 specifies the authority competent to grant approval for the issuance of such notice. He has invited the attention of the Court to Section 149(2) of the Act, which expressly provides that the provisions of sub-section (1) of Section 149, relating to the issuance of notice, shall be subject to the provisions of Section 151 of the Act. He has submitted that Sections 149 and 151 of the Act cannot be read in isolation, as both provisions are intrinsically connected and must be interpreted harmoniously. According to him, the period of limitation computed under Section 149 of the Act, after giving effect to the statutory exclusions and extensions, must also be considered for determining the specified authority under Section 151 of the Act.

22. It was further submitted that, in the present case, the ordinary period of three years for the Assessment Year 2018-19 would have expired on 31.03.2022. However, the Assessing Officer issued a show-cause notice dated 19.03.2022 under Section 148A(b) of the Act, granting time to the petitioner until 28.03.2022 to file a response, and the petitioner submitted her reply on 28.03.2022.

23. Learned Senior Standing Counsel relied upon the third proviso to Section 149(1) of the Act, as it stood at the relevant time, which provides for the exclusion of the time allowed to the assessee to respond to a show-cause notice issued under Section 148A(b) of the Act while computing the period of

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

limitation. He submitted that, upon excluding the period of nine days, the limitation period for the issuance of a notice under Section 148 of the Act stood extended up to 09.04.2022. Consequently, the order under Section 148A(d) and the notice under Section 148 of the Act, both dated 01.04.2022, were issued within the period of three years, as computed in accordance with the statutory provisions.

24. It was contended that, since the proceedings fell within the three-year period after giving effect to the exclusion prescribed under the third proviso to Section 149(1) of the Act, the Principal Commissioner of Income-tax (Central), Surat, was the competent specified authority under Section 151(i) of the Act to grant the requisite approval. He contended that the petitioner's argument that the competent authority must be determined solely by reference to the calendar date on which the notice under Section 148 of the Act was issued, without considering the statutory exclusion of time, would lead to an anomalous result. Such an interpretation, according to him, would treat the notice as having been issued within the prescribed limitation period under Section 149(1)(a) of the Act, while simultaneously requiring approval from the higher authority under Section 151(ii) of the Act. He submitted that such an interpretation would render the statutory scheme unworkable.

25. It was submitted that Section 149(2) of the Act serves as a crucial legislative link by expressly providing that the provisions of Section 149(1) of the Act, relating to the time limit for the issuance of a notice, shall be subject to the

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

provisions of Section 151 of the Act. According to the Revenue, the purpose of Section 149(2) is to harmonise the computation of the limitation period with the sanctioning mechanism, thereby ensuring that Section 151 of the Act is not read in isolation but is interpreted in conjunction with the limitation period computed under Section 149(1) of the Act. It was submitted that, had the legislature intended to de-link the limitation prescribed under Section 149 from the sanctioning mechanism under Section 151, it would not have inserted Section 149(2), particularly when Sections 148 and 148A of the Act already provide for the prior approval of the specified authority under Section 151 of the Act. It was further submitted that Sections 149 and 151 of the Act are intertwined and refer to the same period, namely, whether three years or more than three years have elapsed from the end of the relevant assessment year, for the purposes of issuing a notice and obtaining the requisite sanction.

26. It was contended that the Assessing Officer is required by law to apply the exclusions or extensions provided under the third and fourth provisos to Section 149(1) of the Act while determining the limitation period for issuance of notice, so as to ascertain whether the notice is issued within three years or beyond three years from the end of the relevant assessment year. Once the limitation period is determined, the Assessing Officer is required to seek approval from the specified authority under Section 151 of the Act corresponding to the limitation period so determined. It was further submitted that, since the sanction precedes the issuance of the notice, the two provisions cannot be read in isolation instead must be

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

interpreted harmoniously. According to the Revenue, these provisions are interconnected machinery provisions that operate in tandem.

27. Applying the aforesaid submissions to the facts of the present case, it was submitted that, for the Assessment Year 2018-19, the ordinary three-year limitation period would have expired on 31.03.2022. However, the Assessing Officer issued the notice under Section 148A(b) of the Act on 19.03.2022 and allowed the assessee time until 28.03.2022 to file a response. The third proviso to Section 149(1) of the Act expressly provides that, for the purposes of computing the period of limitation, the time or extended time allowed to the assessee to respond to a show-cause notice issued under Section 148A(b) of the Act shall be excluded

28. By statutorily excluding these nine days (the period from 19.03.2022 to 28.03.2022) from the computation of limitation, the deadline for the Revenue to issue a notice under Section 148 of the Act within the period of three years prescribed under Section 149(1)(a) of the Act stands extended to 09.04.2022. It was submitted that, since the exclusion of the period under the third proviso to Section 149(1) of the Act keeps the proceedings within the three-year period for the purposes of computing limitation, Section 149(2) of the Act requires the authority competent to grant approval under Section 151 of the Act to be determined on the basis of the same computation. If the petitioner's contention were accepted, an anomalous situation would arise wherein the notice issued under Section 148 of the Act would be construed

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

as having been issued within the period of three years in terms of Section 149(1)(a) of the Act, while approval from the higher authority prescribed under Section 151(ii) of the Act, applicable where more than three years have elapsed, would nevertheless be required. Such an interpretation, as canvassed by the petitioner, would render the statutory scheme unworkable and would be contrary to the legislative intent. According to the Revenue, this statutory link demonstrates that approval from the Principal Chief Commissioner under Section 151(ii) of the Act was not required merely because the calendar date on which the notice was issued fell after 31.03.2022, since the period computed after giving effect to the statutory exclusion remained within three years. Therefore, the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act on 01.04.2022 were, according to the Revenue, within the prescribed limitation period of three years, and the Assessing Officer had rightly obtained approval from the Principal Commissioner of Income-tax (Central), Surat, being the specified authority under Section 151(i) of the Act.

29. It was further submitted that, under the general principles governing the computation of limitation, as reflected in Part-III of the Limitation Act, 1963 (Sections 12 to 15), the determination of whether a prescribed period has “expired” or “elapsed” does not invariably depend on an inflexible calendar calculation. Where the legislature expressly provides for the exclusion of certain periods - such as the time required to obtain statutory sanction or consent under Section 15(2) of the

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

Limitation Act, 1963, the period during which an injunction or stay operates under Section 15(1) of the said Act, or the time spent in bona fide prior proceedings under Section 14 of the said Act - the period of limitation is computed after giving effect to such exclusions.

30. It was submitted that a statutory exclusion suspends the running of the limitation period for the period so excluded. Consequently, an action brought within the prescribed period after giving effect to such exclusion is, in the eyes of the law, instituted within the period of limitation. The period counted for limitation purposes, after applying the statutory exclusions, therefore, does not exceed the prescribed limit.

31. It was further submitted that it is well settled that a statute must be construed in a manner that makes its provisions workable and enables them to achieve the purpose of the legislation. Machinery provisions must be interpreted so as to give effect to the object and purpose of the statute, rather than to defeat them.

32. With regard to the decisions relied upon by learned Senior Advocate Mr.Hemani, learned Senior Standing Counsel submitted that the aforesaid decisions were distinguishable and could not govern the issues arising in the present case. He further submitted that those decisions had not considered the specific interplay between Sections 149(2) and 151 of the Act, which formed the basis of the Revenue's case.

33. Learned Senior Standing Counsel placed strong reliance on the decision of the Supreme Court in the case of ***Rajeev Bansal (supra***), and submitted that the said decision

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

recognised the interrelationship between Sections 149 and 151 of the Act. According to him, the Supreme Court had held that the entire period allowed to an assessee to respond to a show-cause notice under Section 148A(b) of the Act was required to be excluded while computing the period of limitation under Section 149 of the Act. He, therefore, submitted that the principle laid down in the case of ***Rajeev Bansal (supra***) supported the Revenue's interpretation that the statutory exclusions prescribed under Section 149 of the Act must be taken into account while determining the authority competent to grant approval under Section 151 of the Act.

34. Relying on the decision in the case of ***Dhanraj Govindram Kella (supra***), learned Senior Standing Counsel submitted that the issue raised in the present writ petition was squarely covered by the said decision. According to him, this Court had rejected the contention that the date of issuance of the notice under Section 148 of the Act was the sole relevant date for determining the specified authority under Section 151 of the Act and had upheld the validity of approval granted by the Principal Commissioner of Income-tax under Section 151(i) of the Act after excluding the relevant periods under Section 149 of the Act. He further relied on Abhinav Jain vs. Income-tax Officer, [2026] 488 ITR 255 (Delhi), wherein, according to the Revenue, the time allowed to the assessee to respond to a notice under Section 148A(b) of the Act was excluded in determining whether the notice fell within the three-year limitation period. Reliance was also placed on Giriraj Commercial (P.) Ltd. vs. Union of India, [2024] 169

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

taxmann.com 168 (Cal.), in support of the submission that the Principal Commissioner of Income-tax was the competent specified authority after giving effect to the statutory exclusion.

35. Without prejudice to the aforesaid submissions, learned Senior Standing Counsel submitted that the proviso inserted in Section 151 of the Act by the Finance Act, 2023, with effect from 01.04.2023, was clarificatory and declaratory in nature and, therefore, its operation was not confined to proceedings initiated after that date. He invited the attention of the Court to the Memorandum explaining the provisions of the Finance Bill, 2023, which stated that the amendment was proposed “to give further clarity with regards to the specified authority”. He submitted that the amendment did not create any new charge, liability or penal consequence but merely clarified the existing statutory mechanism by expressly providing that the period excluded or extended under the provisos to Section 149(1) was to be taken into account while computing the three-year period for determining the specified authority under Section 151 of the Act.

36. In support of the aforesaid contention, learned Senior Standing Counsel relied on the decision of the Supreme Court in the case of Manjula vs. D.A. Srinivas, [2026] 186 taxmann.com 357 (SC) / [2026] 488 ITR 407 (SC), particularly paragraph No.22 thereof, and submitted that an amendment that is clarificatory, declaratory, curative or machinery-oriented may operate retrospectively where its object is to remove an omission, cure a defect or give effect to the original

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

legislative intent. He also relied on the decision in the case of CIT vs. Gold Coin Health Food (P.) Ltd., [2008] 304 ITR 308 (SC), to contend that the nature and effect of an amendment, rather than merely the date from which it comes into force, must be considered in determining its temporal operation. Applying these principles, he submitted that the amendment to Section 151 of the Act was intended to clarify the existing legislative scheme and ensure that Sections 149 and 151 of the Act operated coherently. Accordingly, he contended that the amendment could be applied to the proceedings in the present case.

37. In view of the aforesaid submissions, learned Senior Standing Counsel submitted that the approval granted by the Principal Commissioner of Income-tax (Central), Surat, under Section 151(i) of the Act was valid and that the order dated 01.04.2022 passed under Section 148A(d) of the Act and the notice dated 01.04.2022 issued under Section 148 of the Act were within the prescribed period of limitation. He, therefore, urged that the writ petition was devoid of merit and deserved to be dismissed.

38. With regard to the merits, learned Senior Standing Counsel Mr.Sanghani, has submitted that the re-assessment may not be interfered with at this stage and the petitioner may be relegated to face the assessment since the petitioner is a non-filer of return. It is submitted that there is enough incrementing material to suggest that income chargeable to tax has escaped assessment.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

ANALYSIS AND OPINION:

39. We have heard the learned advocates appearing for the respective parties at length.

40. The petitioner has assailed the notice dated 01.04.2022 issued under Section 148 of the Act and the order dated 01.04.2022 passed under Section 148A(d) of the Act for the Assessment Year 2018-19. The alleged escapement of income is Rs.29,42,074/-.

41. Before proceeding further, the facts necessary for adjudication are set out below :

	Date	***Particulars***
1.	*19.03.2022*	*The AO issued notice u/s 148A(b) of the Act granting time till 28.03.2022 to the petitioner for filing response*
2.	*28.03.2022*	*The Petitioner filed reply/objections*
3.	*01.04.2022*	*Section 148A(d) order came to be passed after obtaining approval dated 01.04.2022 of Pr.CIT(Central) being specified authority u/s 151(i)*
4.	*01.04.2022*	*Impugned notice issued u/s 148 of the Act after obtaining prior approval dated 01.04.2022 of Pr.CIT(Central) being specified authority u/s 151(i)*

It is the case of the petitioner, that the sanction granted by the Pr.CIT on 01.04.2022 is without jurisdiction and illegal, and instead it should be by Pr.Chief CIT, under section 151(ii), whereas the revenue is defending its sanction granted by Pr.CIT under Section 151(i).

INTERPLAY OF SECTION 149 AND 151 OF THE ACT:

42. The case of the respective parties' hinges on the interplay between Sections 149 and 151 of the Act, more particularly in the context of the proviso inserted in Section

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

151 by the Finance Act, 2023, with effect from 01.04.2023. In order to resolve the issue raised in the present writ petition, it is necessary to closely examine the operation and application of the relevant statutory provisions.

43. Section 151 of the Act, as substituted by the Finance Act, 2021, and as it stood on 01.04.2022, reads as follows:

> *"151. Specified authority for the purposes of section 148 and section 148A shall be,-*
>
> *(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*
> *(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."*

44. Section 149(1) of the Act, as it stood on 01.04.2022, read as follows:

> *"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*

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if 6[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 153A, or section 153C read with section 153A, 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 132A, on or before the 31st day of March, 2021:*

***Provided also** that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, **as per show-cause notice issued under clause (b)** of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

***Provided also** that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.
(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]"

45. Since the alleged escapement of income in the present case is less than Rs.50 lakh, the controversy primarily concerns Section 149(1)(a) of the Act, which prescribes a period of three years for the issuance of a notice under Section 148 of the Act. The third proviso to Section 149(1), as applicable at the

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

relevant time, provided for the exclusion of the time allowed to the assessee to respond to the show-cause notice issued under Section 148A(b) of the Act, while the fourth proviso provided for an extension of the residual period to seven days. Both provisos operate expressly "for the purposes of computing the period of limitation as per this section" and in context of Clause(b) of Section 149(1).

46. The Finance Act, 2023, with effect from 01.04.2023, (i) inserted two new provisos in Section 149(1) (now the third and fourth provisos) and renumbered the earlier third and fourth provisos as the fifth and sixth provisos; and (ii) inserted the following proviso to Section 151:

> *"Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149."*

47. Section 151 of the Act, as substituted by the Finance Act, 2021, with effect from 01.04.2021, reads as follows:

> *[Sanction for issue of notice.*
> *151. Specified authority for the purposes of section 148 and section 148A shall be,—*
>
> *(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*
> *(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]*

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

48. Thereafter, the Finance Act, 2023, inserted the following proviso in Section 151 of the Act, with effect from 01.04.2023:

> *"79b [Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.]*
>
> *79b. Inserted by the Finance Act, 2023, w.e.f. 1.04.2023"*

49. Thus, the provision for taking into account the extended period while determining the specified authority for granting sanction under Section 151(i) of the Act was introduced with effect from 01.04.2023.

50. As recorded hereinabove, Section 149 of the Act deals with the limitation period for issuing a notice under Section 148 of the Act, with a clear and specific distinction based on the period of limitation and the monetary threshold demarcating clauses (a) and (b) thereof. Under the Finance Act, 2021, the third and fourth provisos provided for the exclusion or adjustment of time in computing the period of limitation under Section 149(1)(b) of the Act. The fourth proviso refers to the "preceding proviso", namely, the third proviso. Thus, both the third and fourth provisos address the situation contemplated under Section 149(1)(b) of the Act, which prescribes a monetary threshold of ₹50 lakh. Neither proviso applies to clause (a) of Section 149(1) of the Act. By the Finance Act, 2023, two further provisos were inserted; however, the position regarding the adjustment of the limitation period under Section 149(1)(b) of the Act remained unaltered.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

51. Section 149(2) of the Act further provides that sub-section (1) "shall be subject to the provisions of Section 151". The statute, therefore, expressly makes Section 149(1) subject to Section 151 of the Act. In legal parlance, the expression "subject to" means subordinate to, limited by, or contingent upon the fulfilment of a specified condition, rule or provision. Thus, the limitation periods prescribed under clauses (a) and (b) of Section 149(1) of the Act have a direct nexus with the determination of the specified authority competent to grant sanction under Section 151 of the Act. The Supreme Court, in the case of ***Rajeev Bansal (supra***), while considering the issue of the sanctioning authority under Section 151 of the Act, held as follows :

> *"75. After April 1, 2021, the new regime has specified different authorities for granting sanctions under section 151. The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , after April 1, 2021, the prior approval must be obtained from the appropriate authorities specified under section 151 of the new regime. The effect of section 151 of the new regime is thus:*
>
> *(i) If income escaping assessment is less than rupees fifty lakhs : (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and*
>
> *(ii) If income escaping assessment is more than rupees fifty lakhs : (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal*

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

> *Director General or Chief Commissioner or Director General."*
> *76. Grant of sanction by the appropriate authority is a precondition for the Assessing Officer to assume jurisdiction under section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the Assessing Officer with the strict time limits prescribed under section 151 affects their jurisdiction to issue a notice under section 148."*

52. Thus, the Supreme Court has held that obtaining valid sanction from the competent authority under Section 151 of the Act is a strict jurisdictional requirement. A notice issued under Section 148 of the Act without the requisite sanction, particularly where the applicable limitation period necessitates approval from a higher authority, is invalid.

53. We may reiterate that the last date of completion of assessment was 31.03.2022, i.e. three years after the end of A.Y.2018-19. The PCIT, who has granted sanction, beyond the statutory limit of three years, i.e. on 01.04.2022, will have no jurisdiction. The Revenue cannot validate its action by arguing that a timely Section 148A(b) notice cures an untimely Section 151(i) sanction. This contention contradicts the statutory framework of Section 149(1)(a) read with Section 151 (prior to 01.04.2023). Because Section 151 clearly demarcates which authority must grant sanction based on the timeline, the strict limitation periods under Section 149(1)(a) and (b) cannot be blurred or compromised. If the justification of the revenue is accepted then there was no need for the legislature to introduce the proviso under Section 151, w.e.f. 01.04.2023

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

bringing the adjustment of period within the ambit of Section 151(1) since such adjustment already existed under Section 149. The legislature was conscious of clear delineation of the specified authority under Section 151 having direct nexus with Clauses (a) and (b) of Section 149(1), and the provisos appended therein.

PROVISO TO SECTION 151 INSERTED BY THE FINANCE ACT, 2023: WHETHER IT OPERATES RETROSPECTIVELY :

54. The Revenue has contended that the proviso to Section 151 of the Act is retrospective in nature and, therefore, validates the sanction granted by the Principal Commissioner of Income-tax (PCIT) on 01.04.2022. To ascertain the effective date of the amendment, we may refer to the Memorandum explaining the provisions of the Finance Bill, 2023. The Memorandum expressly states that "these amendments will take effect from the 1st day of April, 2023". To further clarify the effective date of the amendments introduced by the Finance Act, 2023, the CBDT issued Circular No. 1/2024 dated 23.01.2024. With regard to Section 151 of the Act and the authority competent to grant sanction, the Circular clarifies that the amendments take effect from 01.04.2023.

55. At this stage, it would be apposite to refer to the decision of the Bombay High Court in the case of ***Skypack Travels (P.) Ltd. (supra***), wherein it was held that the aforesaid proviso operates prospectively. The relevant observations are as follows:

> *"20. We also find merit in the Petitioner's submission that the proviso inserted to Section 151 cannot be treated as retrospective. The Legislature has inserted the proviso specifically with effect from 01 April 2023. Where the Legislature intended retrospectivity, it could have said so*

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

expressly. In the absence of such indication, and particularly where the provision relates to jurisdiction, it cannot be construed so as to retrospectively validate an action which was without jurisdiction when taken.

21. There is another aspect which fortifies the Petitioner's stand. The proviso to Section 151 refers to four provisos to Section 149(1). The same reads thus:

"*Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.*"

22. Two of those provisos i.e., third and fourth proviso to Section 149(1) were inserted with effect from 01 April 2023. The original third and fourth provisos were made fifth and sixth provisos. There is no case made out or even argued that even third and fourth proviso to Section 149(1) are retrospective in nature. Once, the third and fourth proviso to Section 149(1) are undisputedly prospective and effective from 01.04.2023, then the proviso to Section 151 which was inserted at the same time, and which makes a reference to such provisos cannot be held to be retrospective. In that view of the matter also, the proviso to Section 151 cannot be read retrospectively so as to govern notices and orders issued in April 2022."

56. We are in complete agreement with the reasoning adopted by the Bombay High Court in holding that the proviso to Section 151 of the Act operates prospectively. While examining the language of the proviso to Section 151, which refers to the third, fourth, fifth and sixth provisos to Section 149(1), the Bombay High Court categorically observed as follows: "Once the third and fourth provisos to Section 149(1) are undisputedly prospective and effective from 01.04.2023, the proviso to Section 151, which was inserted at the same time and refers to those provisos, cannot be held to operate retrospectively.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

57. We may further observe that the proviso to Section 151 provides for the exclusion of the period specified in the third, fourth or fifth proviso, or the extension of the period under the sixth proviso to Section 149(1) of the Act. Thus, by inserting the proviso to Section 151, the legislature altered the manner in which the three-year period is computed for determining the specified authority under Section 151(i) of the Act. In our opinion, such an alteration in the computation of the limitation period, which substantially affects the vested rights of an assessee and alters the jurisdiction, must operate prospectively unless the legislature has expressly or by necessary implication provided for retrospective operation. Had the legislature intended the amendment to operate retrospectively, it could have expressly provided for such retrospective effect. In this regard, we may appropriately rely on the decision of the Constitution Bench of the Supreme Court in the case of ***CIT vs. Vatika Township Private Limited (supra***). While examining the proviso appended to Section 113 of the Act, the Supreme Court held as follows -

> *"34. It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404].)*
>
> *35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force : (SCC p. 914, para 11)*
>
> > *"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions*

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.'"

(emphasis supplied)

36. In CIT v. Scindia Steam Navigation Co. Ltd. [AIR 1961 SC 1633 : (1962) 1 SCR 788] , this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.

XXXX

42. There are some other circumstances which reflect the legislative intent. The problem which was highlighted in the Conference of Chief Commissioners on the rate of surcharge applicable, is noted above. In view of the aforesaid difficulties pointed out by the Chief Commissioners in their Conference, it becomes clear that as per the provisions then enforced, levy of surcharge in the block assessment on the undisclosed income was a difficult proposition. It is for this reason retrospective amendment to Section 113 was suggested. Notwithstanding the same, the legislature chose not to do so, as is clear from the discussion hereinafter:

42.1. "Notes on Clauses" appended to the Finance Bill, 2002 while proposing insertion of proviso categorically states that "this amendment will take effect from 1-6-2002". These become epigraphic [Ed. : As per the Oxford Dictionary, "epigraphic" here means : intending to suggest the theme or

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

purpose of the amendment.] words, when seen in contradistinction to other amendments specifically stating those to be clarificatory or retrospective depicting clear intention of the legislature. It can be seen from the same Notes that a few other amendments in the Income Tax Act were made by the same Finance Act specifically making those amendments retrospective. For example, Clause 40 seeks to amend Section 92-F. Clause (iii-a) of Section 92-F is amended "so as to clarify that the activities mentioned in the said clause include the carrying out of any work in pursuance of a contract" (emphasis supplied). This amendment takes effect retrospectively from 1-4-2002. Various other amendments also take place retrospectively. The Notes on Clauses show that the legislature is fully aware of three concepts:
(i) prospective amendment with effect from a fixed date;
(ii) retrospective amendment with effect from a fixed anterior date; and
(iii) clarificatory amendments which are retrospective in nature.

42.2. Thus, it was a conscious decision of the legislature, even when the legislature knew the implication thereof and took note of the reasons which led to the insertion of the proviso that the amendment is to operate prospectively. The learned counsel appearing for the assessees sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. Insofar as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1-6-2002."

58. Thus, the Constitution Bench of the Supreme Court has reaffirmed that an assessee's vested rights cannot be adversely affected by an amendment unless the legislature has expressly or by necessary implication provided for its retrospective operation. It has held that retrospective operation should not be attributed to a statutory provision so as to take away or impair an existing right, create a new obligation or impose a new liability, except in matters of

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

procedure. It has also held that tax liability is computed in accordance with the law in force at the beginning of the assessment year i.e. on the first day of April, and that any subsequent change in the law affecting such liability, unless specifically made retrospective, does not apply to that assessment year.

59. The Supreme Court has also considered the legislative intent reflected in the Notes on Clauses and the relevant clarificatory circular issued by the CBDT while determining whether the proviso in question operates prospectively. In the present case, the petitioner claims the benefit of the statutory safeguards governing reassessment, and the impugned proceedings adversely affect her rights. The proviso to Section 151 of the Act introduces a specific rule for taking into account the periods excluded or extended under Section 149(1) while determining the competent authority under Section 151(i). If applied retrospectively, it would validate sanctions that were otherwise invalid under the law applicable on the date they were granted, thereby altering the authority competent to grant sanction and diluting a statutory safeguard. Such a substantive change in jurisdiction cannot be applied retrospectively in the absence of a clear legislative intention to that effect. Accordingly, we hold that the proviso appended to Section 151 of the Act by the Finance Act, 2023, operates with effect from 01.04.2023 and does not apply retrospectively.

<u>DISCUSSION ON THE CASE LAW</u> :

60. A catena of decisions has been relied upon by the respective parties. We have already dealt with the decision of

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

the Supreme Court in the case of ***Rajeev Bansal (supra***), which has been relied upon by both sides. We shall now consider a few other decisions.

61. The Revenue has primarily relied upon the decision of the Coordinate Bench of this Court in the case of ***Dhanraj Govindram Kella (supra***). We have no quarrel with the principle laid down in the said decision; however, the factual and legal context in which it was rendered is distinguishable from the issue arising in the present writ petition.

62. It is noticed that the Coordinate Bench was examining reassessment proceedings for the Assessment Years 2013–14 to 2017–18, involving the three-year limitation period and the extension of time under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA). The Coordinate Bench referred to the decision of the Supreme Court in the case of ***Ashish Agarwal (supra***), wherein the notices issued under the erstwhile Section 148 regime were directed to be treated as show-cause notices under Section 148A(b) of the new regime. The Supreme Court granted the assessees 30 days from the date of its decision i.e. 04.05.2022, to file their replies, following which the Revenue was required to pass orders under Section 148A(d) and issue notices under Section 148 of the Act. At the same time, the notices were directed to be governed by the limitation prescribed under Section 149(1), as amended with effect from 01.04.2021.

63. The Coordinate Bench further referred to the decision of the Supreme Court in the case of ***Rajeev Bansal (supra***). In

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

relation to the Assessment Year 2017-18, for which the ordinary assessment limitation period expired on 31.03.2021, the Supreme Court considered the effect of TOLA and held that the period from 30.06.2021 to 04.05.2022, together with the further period of 15 days consumed by the assessee in filing the reply, was required to be excluded to determine the surviving period available under TOLA. After considering these precedents, the Coordinate Bench held that the approval granted by the specified authority under Section 151(i) for issuance of the orders under Section 148A(d) and notices under Section 148, issued between 01.04.2021 and 30.06.2021 for the Assessment Years 2013-14 to 2017-18, was valid.

64. In the present case, however, the notice under Section 148A(b) of the Act for the Assessment Year 2018-19 was issued on 19.03.2022. After the petitioner filed her reply, the order under Section 148A(d) and the notice under Section 148 were issued on 01.04.2022, pursuant to approval granted by the Principal Commissioner of Income-tax (Central), Surat, under Section 151(i) of the Act. The last date for completion of assessment with effect from 31.03.2022 i.e., 3 years from the end of assessment year 2018-19.The issue before us concerns the retrospective application of the proviso to Section 151, inserted by the Finance Act, 2023, with effect from 01.04.2023, to validate that sanction. That question was not the issue examined by the Coordinate Bench in the case of ***Dhanraj Govindram Kella (supra***). Consequently, reliance on the said decision does not assist the Revenue in the present case.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

65. The decision in the case of ***Abhinav Jain (supra***), relied upon by the Revenue, is also distinguishable on its facts and the issue involved. The Delhi High Court rendered its decision in the context of an undisputed fact that two corrigenda had been issued, extending the time allowed to the assessee to respond to the notice. Having regard to those extensions, and in the absence of a challenge to the corrigenda by the petitioner therein, the Court applied the third proviso to Section 149(1) of the Act, held that the notice was within the prescribed period of limitation and treated the Principal Commissioner of Income-tax as the competent authority.

66. Learned Single Judge of the Calcutta High Court, in the case of ***Giriraj Commercial (P.) Ltd. (supra***), did not examine the effect of the insertion of the proviso to Section 151 of the Act with effect from 01.04.2023. The Court applied the amended provisions referred to before it as the “recent amendment”, without the question of the proviso's retrospective operation being raised, argued or decided. A decision rendered without considering or deciding a particular question of law does not constitute a binding precedent on that question; the principle of *sub silentio* is therefore relevant in the present context.

67. In support of the contention that the proviso to Section 151 operates retrospectively, the Revenue has relied upon the recent decision of the Supreme Court in the case of Manjula vs. D.A. Srinivas, [2026] 186 taxmann.com 357 (SC). The observations in paragraph No.22.3 of the said decision are

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026 Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

relied upon to submit that the Supreme Court reiterated that "the protection against retrospectivity generally extends only to vested or accrued rights".

68. The said decision concerned amendments to the Benami Transactions (Prohibition) Act, 1988, introduced in 2016 to address the mischief associated with benami transactions. After examining the object and effect of the amendments, the Supreme Court upheld their retrospective application, observing, in substance, that no person could claim a vested right to enter into a benami transaction intended to defeat the law. The principle applied in that context does not, by itself, establish that the proviso to Section 151 of the Income-tax Act was intended to operate retrospectively. The retrospective operation of an amendment must be determined having regard to its language, object, effect and the legislative intent applicable to the particular enactment. Accordingly, the decision in the case of ***Manjula (supra***) does not, by itself, support the Revenue's contention in the present case.

69. In the case of CIT vs. Gold Coin Health Food (P.) Ltd., [2008] 304 ITR 308 (SC), the Supreme Court considered an amendment that was held to be clarificatory in nature and did not create a new liability. The Notes on Clauses themselves described the amendment as clarificatory. As discussed hereinabove, however, the Notes on Clauses to Clause 71 of the Finance Bill, 2023, concerning the proviso to Section 151 of the Act, specifically state that "these amendments will take effect from 1st April, 2023".

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

70. In the case of ***Gold Coin Health Food (P.) Ltd. (supra***), the Supreme Court was required to examine whether the amendment was clarificatory or substantive in nature. The significance of the Notes on Clauses in determining the nature and effect of an amendment was further elucidated by the Constitution Bench of the Supreme Court in the case of ***Vatika Township (supra***). Applying the principles laid down in the latter decision, and having regard to the express effective date specified for the amendment, we hold that the proviso to Section 151 of the Act, inserted by the Finance Act, 2023, operates prospectively with effect from 01.04.2023.

OPINION ON MERITS:

71. Upon close scrutiny of the impugned order, the notice and the reply filed by the petitioner, we find that the action of the Revenue warrants interference.

72. The petitioner has been subjected to reassessment on the basis of material found during the survey conducted at M/s.Saral Infra on 18-19.04.2019. During the survey proceedings, Mr.Sunilbhai Patel was confronted with details contained in the impounded material, and his statement was recorded on oath under Section 131 of the Act. He was shown loose papers relating to the sale of lands bearing various survey numbers, including the land owned by the petitioner.

73. The petitioner had sold the land by a sale deed dated 17.10.2017 to two purchasers viz. Nathabhai Gordhanbhai Gajera, HUF, and Vilasben Nathabhai Gajera. In his statement, Mr.Sunilbhai Patel stated that the lands purchased had

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

subsequently been sold and that a profit of Rs.2,34,99,954 had been earned. On the basis of this statement, the Assessing Officer attributed a share of the alleged on-money consideration to the petitioner and concluded that income amounting to Rs.29,42,074 had escaped assessment.

74. The petitioner categorically contended that she had never sold the land to Mr.Sunil Patel and that her name did not appear in any of the loose papers impounded during the survey. Nevertheless, the Assessing Officer rejected her defence, relying upon the statement of Mr.Sunil Patel and the petitioner's failure to report the alleged transaction in a return of income.

75. Upon perusal of the documents and loose papers reproduced in the impugned notice and order, we find that the impounded material does not establish any direct or identifiable connection with the petitioner. The loose papers do not disclose any names. Apart from the survey numbers and the rates of the lands, they contain no other particulars or information capable of establishing the petitioner's involvement in the alleged transaction.

76. It is also undisputed that the petitioner did not sell the land to Mr.Sunil Patel. Nor has any material been brought on record to establish that Mr.Sunil Patel acted as a broker for the petitioner. The petitioner sold the land on 17.10.2017, whereas the material was impounded nearly two years later, on 18–19.04.2019, during the survey at M/s.Saral Infra. No live link has been established between the petitioner and either M/s.Saral Infra or Mr.Sunil Patel.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION
undefined

77. In these circumstances, the reassessment proceedings are founded on material that does not, even *prima facie*, establish the petitioner's connection with the alleged receipt of on-money consideration. The petitioner cannot be subjected to the rigours of reassessment on such material. Accordingly, the Revenue's action fails on merits as well.

CONCLUSION AND ORDER :

78. We reiterate that the grant of sanction by the competent specified authority under Section 151 of the Act is a prerequisite for the Assessing Officer to assume jurisdiction to issue a reassessment notice under Section 148 of the Act. Non-compliance with the statutory requirements governing the competent authority and the applicable limitation period affects the jurisdiction of the Assessing Officer to issue such notice.

79. In the present case, the Principal Commissioner of Income-tax (Central), Surat, granted sanction on 01.04.2022 under Section 151(i) of the Act. The validity of that sanction cannot be sustained by retrospectively applying the proviso to Section 151, which was introduced with effect from 01.04.2023 and altered the manner of computing the three-year period for determining the specified authority under Section 151(i). As the said proviso operates prospectively, it cannot validate the sanction granted in the present case under the law applicable on the relevant date. Accordingly, the sanction dated 01.04.2022, and the consequential order under Section 148A(d) and notice under Section 148 of the Act, demands interference by this Court as the same is without jurisdiction.

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026
Downloaded on : Sat Oct 24 11:38:16 IST 2026

NEUTRAL CITATION

undefined

80. Accordingly, the writ petition succeeds and is ***allowed***. The impugned order and notice, both dated 01.04.2022, are hereby quashed and set aside. Rule is made absolute.

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

Sd/-
(VAIBHAVI D. NANAVATI,J)

MAHESH/SB/01

Uploaded by MAHESH OMPRAKASH BHATI(HC01086) on Fri Oct 23 2026

Downloaded on : Sat Oct 24 11:38:16 IST 2026