

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 8600 of 2024****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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URVASHI KANUBHAI DESAI

Versus

INCOME TAX OFFICER WARD 1(2)(1) OR HIS SUCCESSOR

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Appearance:

MR SN DIVATIA(1378) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

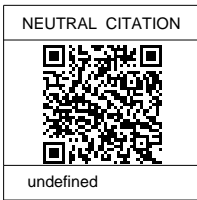
NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 01/09/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)**

1. Heard learned advocate Mr. S.N. Divatia for the petitioner and learned Senior Standing Counsel Mr. Varun Patel for the respondent.

2. Having regard to the controversy arising in this petition which is in narrow compass with the consent of the learned

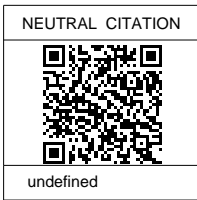


advocates for the respective parties the same is taken up for hearing.

3. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Varun K. Patel waives service of notice of rule on behalf of the respondent.

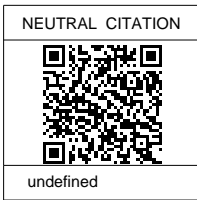
4. Present petition preferred under Article 226 of the Constitution of India assails the validity of order dated 13.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as “the Act” for short) along with notice issued under Section 148 of the Act dated 13.04.2023 for the Assessment Year 2016-17 by the Income Tax Officer, Ward-1(2)(1), Ahmedabad (hereinafter referred to as the “respondent” for short).

5. The facts giving rise to the filing of the present writ petition are that the petitioner is an individual and engaged in the business of data, data selling and purchasing under the trade name “Excellere Outsourcing Services.” The petitioner is regularly assessed to tax at PAN: AYHPD 5232E. The original return of income for the Assessment Year 2016-17 was filed by

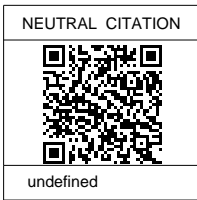


the petitioner on 05.08.2016 declaring the total income of Rs.3,68,260/-

5.1. It is the case of the petitioner that subsequent to filing of the return of income, the respondent initiated reassessment proceedings under Section 147 of the Act by issuing notice under Section 148 of the Act on 30.03.2021, on an information about huge cash deposits made in the Bank accounts of the petitioner. The information was also received on the insight portal as regards purchase and sale of Crypto Currency. The petitioner in response to notice dated 30.03.2021 filed the return of income on 17.01.2022 declaring total income at Rs.3,20,580/- for the Assessment Year 2016-17. The respondent thereafter issued notice under Section 142(1) of the Act dated 11.01.2022 asking the petitioner to submit details relating to the transactions in respect of Crypto Currency along with detailed computation of capital gain. Thereafter, the respondent issued show cause notice dated 28.02.2022 proposing to make additions of Rs.8,77,250/- as short term capital gains on sale of Crypto Currency.

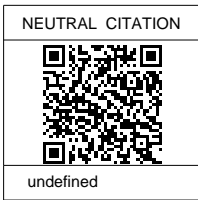


5.2. The said notices was responded by the petitioner by replies dated 27.01.2022 and 07.03.2022 wherein it was contended that the Crypto Currency transacted by the petitioner were entered in due course of their business transactions and the transactions were already declared by the petitioner in their business returns. It is the case of the petitioner that regular assessment was completed and Assessment Order under Section 147 read with Section 144B of the Act was passed on 15.03.2022 for the Assessment Year 2016-17 computing the total income of petitioner at Rs.3,20,580/-. It is further the case of the petitioner that the respondent once again initiated the assessment proceedings under the new regime under Section 148A of the Act by initially issuing notice under Section 148A(b) of the Act on 30.03.2023 on the same ground relating to Crypto Currency stating that the petitioner had entered into high value transactions in Crypto Currencies during Assessment Year 2016-17 and that the petitioner has not disclosed any profit from Crypto Currency in their return. The petitioner was asked to submit its reply to the said notice by 10.04.2023. It is the case of the petitioner that she was advised by her Chartered



Accountant that since same issue has been examined by the Assessing Officer for the assessment year under consideration, there was no requirement of filing any response. However, the respondent passed the impugned order under Section 148A(d) of the Act on 13.04.2023 holding that the income to the tune of Rs.59,89,590 had escaped the assessment for the Assessment Year 2016-17 and therefore, the case of the petitioner is fit for the issuance of notice under Section 148 of the Act. Thereafter notice under Section 148 of the Act was issued on 13.04.2023. The impugned order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act are the cornerstone of the challenge in the present writ petition.

6. Learned advocate Mr. Divatia for the petitioner submitted that the investment and sale of Crypto Currency which is the subject matter of order passed under Section 148A(d) of the Act was also considered by the Assessing Officer while making regular assessment under Section 147 of the Act read with Section 144B of the Act on 15.03.2022. It was therefore submitted that on the very same issue which is already considered by the Assessing Officer, again notice issued under

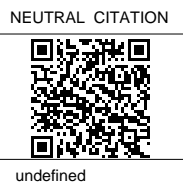


Section 148A(b) of the Act could not have been issued. Therefore, the impugned order passed under Section 143A(d) of the Act and notice under Section 148 of the Act are absolutely without jurisdiction and patently bad in law.

7. *Per contra*, learned Senior Standing Counsel Mr. Varun K. Patel for the respondent was not in a position to defend the contentions raised by learned advocate Mr. Divatia and conceded to the fact upon instructions that the reasons which were subject matter of challenge were also recorded in the original Assessment Order.

8. Having heard the learned advocates for the respective parties and having perused the material on record, it would be proper to go through the Assessment Order passed under Section 147 read with Section 144B of the Act dated 15.03.2022:

“With regard to the information in the Insight Portal as to purchase of Crypto Currency of Rs.51,12,340/- and sold at Rs.58,89,590/-, the assessee was asked to furnish ledge copy of transaction of Crypto Currency and non-disclosure of Capital gain in the return of income. The assessee in its reply has stated that ‘she has no intention to purchase Crypto Currency but it was taken out of debt of one of her customers. She has due with her customer from Singapore and they offered Crypto Currency against their outstanding due of around Rs.50 lakh. Subsequently, the assessee has accepted the offer and the



Customer facilitates platform of transferring Crypto called ZEB IT Services Ltd., Crypto transactions took place.

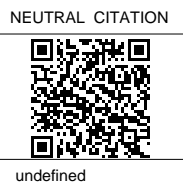
<i>Transactions</i>	<i>Amount</i>
<i>Crypto Take against outstanding dues</i>	<i>50,30,000/-</i>
<i>Crypto transferred to Vendors for due</i>	<i>31,60,000/-</i>
<i>Amount should available in Crypto A/c.</i>	<i>18,70,000/-</i>
<i>Crypto disbursed by ZEB IT</i>	<i>20,50,000/-</i>
<i>Profit gained from Crypto</i>	<i>1,80,000/-</i>

However, I already showed these transactions in Business returns. While filing this return, I have showed this disbursement against business income as even Act is not clear how to tax this transaction in respective year, Crypto is transacted through my business and not as special transactions and I have considered as exchange gain and shown as my business profit.

On perusal of the ledger account with ZEB IT Services and bank account, it is seen that an amount of Rs.8,77,250/- has been received from ZEB IT Services and credited in the Yes Bank A/c. No. 785800000114 on 25.03.2016. As mentioned above the assessee has purchased Crypto Currency of Rs.51,12,340/- and sold at Rs.59,89,590/-. Thus, the profit on sale of Crypto Currency comes to Rs.8,77,250/- which has to be treated as income from Capital Gain. Since the assessee has not shown any Capital Gain in the return of income, the profit of Rs.8,77,250/- is proposed to be treated as income from Capital Gain and to be added to the total income of the assessee.

A show cause notice was issued to the assessee on 28.02.2022 giving an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly. The assessee is required to submit the response on or before 07.03.2022. On 07.03.2022 the assessee has submitted the response through a written explanation along with profit and loss statement of Bitcoin Crypto through Zeb Pay. After examination of the document and on the facts and circumstances of the case, no adverse inference is being drawn in this case. The returned figure shown by the assessee at Rs.3,20,580/- is accepted."

8.1. It would also be proper to refer to notice dated 30.03.2023 issued under Section 148A(d) of the Act which reads as under :



ANNEXURE

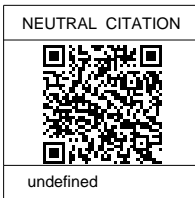
It is informed to you that this office is in possession of information from credible source that you have entered into a high value transaction during the financial year 2015-16 relevant to A.Y. 2016-17, as given below :

"You have invested in Crypto Currency amounting to Rs.51,12,340/0 through ZEBPAY Exchange during the financial year 2015-16 relevant to AY 2016-17. However, income returned by you is not commensurate with the investment in Crypto Currency. Moreover, you have not disclosed any profit/gain from the transactions in crypto currency in your return."

2. Above mentioned information has been flagged on insight portal in accordance with the risk management strategy formulated by the Central Board of Direct Taxes. Above mentioned information fails under the definition of Explanation (i) of Section 148 of the Act which became effective from 01.04.2021. On going through the various information available with this office and inquiries conducted by this office, it appears that the transactions carried out by you has escaped assessment within the meaning of Section 147 of the Income Tax Act for the AY 2016-17."

9. On going through the same, it is not in dispute that the reasons recorded in the notice issued under Section 148A(b) of the Act was already considered by the Assessing Officer in the Assessment Order dated 15.03.2022. The Assessing Officer does 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.

10. It is settled law that the proceedings under Section 148 of



the Act cannot be initiated to review the earlier stand adopted by the Assessing Officer. The Assessing Officer 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. This issue has been categorically settled by the Hon'ble Apex Court in case of ***Commissioner of Income Tax, Delhi v. Kelvinator of India Limited*** reported in ***(2010) 320 ITR 561***.

11. In view of the above, the present petition is required to be allowed and the same is hereby allowed. The impugned Notice dated 13.04.2023 passed under Section 148A(d) of the Act and the notice of same date issued under Section 148 of the Act are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to cost.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

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