



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15851 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Sd/-

Approved for Reporting	Yes	No
	✓	

GULBRANSEN PRIVATE LIMITED

Versus

DY. COMMISSIONER OF INCOME TAX, CIRCLE 1(1)(1) VADODARA

Appearance:

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

MR RUTVIJ R PATEL(10615) for the Respondent(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 24/02/2026

ORAL JUDGMENT

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

1. **RULE.** Learned Senior Standing Counsel Mr.Patel waives service of notice of rule for and on behalf of the respondent(s).

2. Since a short issue is involved in the present writ petition, with the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

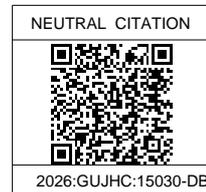
3. In the present writ petition, the petitioner has assailed the notice dated 16.06.2025 issued



under section 148 of the Income Tax Act, 1961 (for short "the Act") and the order dated 14.06.2025 passed under section 148A(3) of the Act.

FACTS:

4. The petitioner filed its return of income under section 139 of the Act for the Assessment Year (AY) 2021-22 on 27.02.2022 declaring its total income of Rs.1,04,31,37,610/- followed by filing of a revised return of income on 11.03.2022 declaring total income of Rs.1,04,31,37,610/- and the same has been processed under section 143(1) of the Act on 04.10.2022 accepting the returned income. Subsequently, the case of the petitioner was selected for complete scrutiny, pursuant to which the petitioner was served with notice dated 28.06.2022 under section 143(2) of the Act. Thereafter, the petitioner received the show-cause notice dated 13.12.2023 under section 143(3) of the Act proposing certain variations prejudicial to the interest of the petitioner in the ongoing assessment proceedings for the year under consideration. The petitioner replied to the said show-cause notice vide letter dated 19.12.2023 providing detailed explanations along



with supporting documents in respect of each issue raised therein.

5. Thereafter, the Draft Assessment Order dated 28.12.2023 under section 144C(1) of the Act came to be passed proposing variation to the returned income of the petitioner, wherein the additions were proposed. The petitioner thus, submitted its objections against the said order vide letter dated 24.01.2024 and opted not to file objections before the Dispute Resolution Panel (DRP), but to file an appeal before the Commissioner of Income Tax (Appeals) (CIT(A)) against the final assessment order passed under section 143(3) of the Act however, no action was taken by the respondent, thereafter. Subsequently, a show- cause notice dated 28.03.2025 under section 148A(1) of the Act was issued to the petitioner alleging that income chargeable to tax amounting to Rs.8,47,384/- has escaped assessment, for which the petitioner replied vide letter dated 10.04.2025 contenting that the proposed re- opening of the assessment for the year under consideration is unjustified and the assessment was already completed by accepting the returned income of Rs.1,04,31,37,610/-. The petitioner further



submitted that the reasons recorded for re-opening related to a proposed TP adjustment of Rs.4,98,982/- and additional depreciation of Rs.3,48,402/- on account of addition to fixed assets, totaling Rs.8,47,384/- as alleged escaped income. The petitioner asserted that these issues were already examined during the scrutiny proceedings under sections 143(2) and 143(3) of the Act and no fresh tangible material suggesting escapement of income has been provided by the respondent-Revenue.

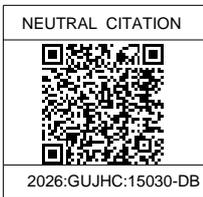
6. Further, disregarding the submissions of the petitioner in its letter dated 10.04.2025, the respondent-Revenue passed the impugned order dated 14.06.2025 under section 148A(3) of the Act holding that the income chargeable to tax in the hands of the petitioner for the A.Y. 2021-22 worth Rs.8,47,384/- has escaped assessment within the meaning of section 147 read with section 148 of the Act. The reasons recorded included a proposed adjustment of Rs.4,98,982/- in respect of international transactions undertaken by the petitioner and additional depreciation of Rs.3,48,402/- claimed on account of addition of fixed assets totaling Rs.8,47,384/- , which has escaped assessment.



SUBMISSIONS

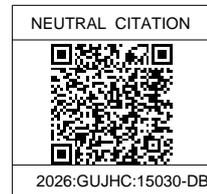
7. Learned Senior Advocate Mr.Hemani has submitted that Section 144C(4) of the Act mandates that the AO "shall" pass the final assessment order within one month from the end of the month in which the assessee either communicates acceptance of the draft order or the period for filing objections expires and, therefore, once an assessee files objections (or accepts the draft, as the case may be), the AO must complete the assessment by the statutory deadline and in the facts of the present case, the AO has not passed any such order. He has submitted that in other words, the AO has accepted the reply of the petitioner and has chosen not to pass any order.

8. It is contended that after the Draft Assessment Order dated 28.12.2023 was passed under Section 144C(1) of the Act, the AO has accepted the reply of the petitioner and has chosen not to pass any adverse order or for that matter no order at all. He has submitted that it is a settled principle of law that if an issue is raised and discussed in the earlier proceedings, the same cannot be revisited in the reassessment proceedings for assuming jurisdiction even when



the issue is not discussed in the body of assessment and in the present case, the AO has not passed any order at all, either by accepting the reply or simply an oversight and hence, Under both the circumstances, reassessment cannot be initiated.

9. Learned Senior Advocate Mr.Hemani thereafter, has submitted that reopening of the assessment is nothing but change of opinion as on the same opinion Draft Assessment Order dated 28.12.2023 was passed, wherein the petitioner filed his detailed response vide letter dated 24.01.2024 however, without passing further assessment order, the AO resorted to issuance of notice under section 148 of the Act. It is submitted that such notice can only be issued if there is any escapement of income chargeable to tax and there must be a live link or close nexus between material before the AO. It is submitted that in the present case, the material before the AO was already examined and the same has culminated into the Draft Assessment Order. In support of his submissions, learned Senior Advocate Mr.Hemani has placed reliance on the decisions of the Delhi High Court in the case of Commissioner of Income-tax Vs. Ved & Co., [2007] 162 Taxman



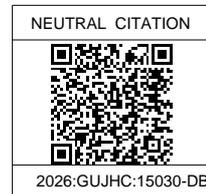
366 (Delhi) and in the case of *KLM Royal Dutch Airlines Vs. Assistant Director of Income-tax*, [2007] 159 Taxman 19 (Delhi).

10. Opposing the present writ petition, learned Senior Standing Counsel Mr.Patel at the outset, has submitted that the decisions, on which reliance is placed by the petitioner, will not apply to the facts of the present case as it cannot be said that the reopening of the assessment and issuance of show-cause notice under section 148A of the Act is change of opinion as earlier proceedings which culminated into the Draft Assessment Order, did not culminate into the Final Assessment Order. It is finally submitted that in fact, no order under section 143(3) of the Act has been passed and hence, it was always open for the AO to resort to the provision of section 148(3) of the Act. Thus, it is urged that the writ petition may not be entertained.

ANALYSIS

11. We have heard the learned advocates appearing for the respective parties and also perused the documents, as pointed out by them.

12. The established facts from the pleadings and documents on record, are that initially, the



petitioner was roped into the proceedings by issuing show-cause notice dated 13.12.2023 for determining of the Arm's Length Price of the international transactions on the same amount i.e. addition to plant and machinery to the tune of Rs.3,10,91,411/- and Rs.8,37,09,902/-, for which the petitioner had supplied all the copies of invoices. Accordingly, the show-cause notice dated 13.12.2023 issued for the AY 2021-22 proposed dis-allowance of expenditure.

13. The petitioner accordingly, responded to such notice vide reply dated 19.12.2023 and explained its depreciation claimed on addition to fixed assets, unexplained expenditure on account of contract payments, dis-allowance of expenditure etc. The proceedings culminated into the Draft Assessment Order under section 144C(1) of the Act, which was passed on 28.12.2023 in which variation was proposed on the basis of inference drawn on account of adjustment determined by the Transfer Pricing Officer (TPO). Variation in respect of TP adjustment to the extent of Rs.4,98,982/- and with respect to dis-allowance of additional depreciation claimed on fixed assets to the tune of Rs.3,48,402/- were determined by holding that petitioner has



under- reported his income and to such extent, penalty proceedings were also initiated.

14. The petitioner vide communication dated 24.01.2024 written to the AO, clarified that he would not like to raise any objection before the DRP and instead intends to file an appeal before the CIT(A) against the assessment order passed under section 143(C) of the Act. The things stopped at that stage and the proceedings thereafter, lapsed due to expiry of limitation as prescribed under section 144C(4) of the Act. No final order under section 144C (13) read with section 143(3) of the Act was passed.

15. Being conscious about lapse of proceedings, the AO thereafter, resorted to reopening the assessment by issuing notice under section 148 of the Act dated 20.03.2025 for the very same transactions and the same amount, which was already under scrutiny and culminated into Draft Assessment Order. It was recorded in the notice that proposed TP adjustment of Rs.4,98,982/- instead of international transactions undertaken by the petitioner and additional depreciation of Rs.3,48,402/- claimed by the petitioner on account of additional fixed assets were flagged



in the system and on the basis of such amount, reopening was undertaken.

16. The petitioner filed a detailed reply dated on 10.04.2025 pointing out the Draft Assessment Order dated 20.12.2023 having been passed under section 144C(1) of the Act. Thus, the petitioner categorically raised objections however, the same were not considered and the AO passed the order under section 148(3) of the Act on 14.06.2025.

17. Keeping in mind the aforementioned established facts at this stage, we may refer to the decision of the Delhi High Court in the case of **Ved & Co. (supra)**:

"10. We are of the opinion that in view of the decisions that we have mentioned above, for the purposes of initiating reassessment proceedings, the Assessing Officer could not have made up his mind that the income of the assessee has escaped assessment while a valid return was still pending before him. If the Assessing Officer had allowed the time to elapse for taking action under section 143(2) of the Act, it was entirely his own doing. What the Assessing Officer is now trying to do in an indirect (and incorrect) manner is what he could not have done directly.

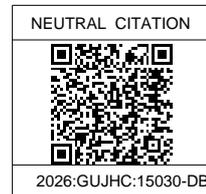
11. The further contention raised on behalf of the revenue is that even if no assessment order was framed, the Assessing Officer could issue a notice for reassessment. We are of the view that if no assessment had been made, there was no occasion for the Assessing Officer to conclude that income had already escaped assessment."



18. We may also refer to the another decision of the Delhi high Court rendered in the case of **KLM Royal Dutch Airlines (supra)**:

"15. Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no fresh evidence or material' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under section 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law."

19. Thus, in the present case, if the legal precedent is applied, it can be presumed that if no final assessment order has been passed within the limitation period under section 144C(4) of the Act; the explanation tendered by the petitioner in the Return of Income, has been accepted as correct. It is not the case of the respondent-Revenue that it has come across any other material or fresh material, apart from the



material which was considered in detailed scrutiny assessment. Instead of passing final assessment order under section 143(3) of the Act, and having allowed the proceedings to be lapsed, the reopening of the assessment on the very same material is impermissible under section 148 of the Act. Thus, the Revenue cannot be allowed to take benefit of its own wrong as it was always open for the AO to take proceedings under section 144C to its logical end, after final reply was submitted by the petitioner, more particularly, the petitioner having clarified its intention not to question the Draft Assessment Order before the DRP, but to take recourse to file an appeal before the CIT(A). Thus, without diligently finalizing the assessment within limitation, the proceedings were allowed to be lapsed. Hence, the Revenue by reopening the assessment by issuing notice and order under section 148 of the Act has in fact, indirectly attempted to camouflage its remissness of allowing to lapse the earlier assessment proceedings, and consequently, to further extend the limitation for finalizing the assessment.



20. Hence, it is not open for the AO to reopen the assessment under section 147 of the Act on the very same material, which was examined under detailed scrutiny assessment having culminated into a draft assessment order under section 144C of the Act.

21. In light of the foregoing analysis and observations, we are of the opinion that the present writ petition deserves to be allowed and the same is hereby allowed. The impugned notice dated 16.06.2025 issued under section 148 of the Act and the order dated 14.06.2025 passed under section 148A(3) of the Act are quashed and set aside. Rule made absolute. There shall be no order as to costs.

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

Sd/-
(PRANAV TRIVEDI, J)

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