NEUTRAL CITATION
2026:GUJHC:34851-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11005 of 2025

FOR APPROVAL AND SIGNATURE:

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

==========

Approved for Reporting	Yes	No
	✔	

==========

PANDESARA INFRASTRUCTURE LIMITED
Versus
THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE - 2(1)(1) SURAT

==========

Appearance:
MR. TUSHAR HEMANI Senior Counsel assisted by MS.VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
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

Date : 08/06/2026

ORAL JUDGMENT

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

1. **RULE.** Learned Senior Standing Counsel Mr. Karan G. Sanghani waives service of notice of rule on behalf of the respondent.

NEUTRAL CITATION
2026:GUJHC:34851-DB

2. Since a short issue is involved, with the consent of the learned counsel appearing for the respective parties, the matter is taken up for final hearing.

3. By way of the present petition under Article 226 of the Constitution of India, the petitioner challenges the Notice dated 28/06/2025 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and the Order dated 28/06/2025 issued under Section 148A (3) of the Act.

4. The brief facts of the case are that, the petitioner is engaged in providing the services to the cluster of industries in Pandesara, Surat in the field of waste effluent management. The petitioner filed its return of income under Section 139 of the Act for the Assessment Year (for short A.Y.) 2020-21 on 31/10/2020 declaring total income of Rs. Nil after claiming deduction under Section 80IA(4)(I) of the Act amounting to Rs.20,51,02,091/-. In that return of income, the petitioner has offered book profit of Rs. 23,50,77,870/- for taxation under section 115JB of the Act. Subsequently, the case of the petitioner was selected for scrutiny through Computer Aided Scrutiny Selection (CASS) for complete scrutiny and the Assessment Order under Section 143(3) read with Section 144B of the Act was passed on 30/08/2022 after accepting the returned income.

4.1. Thereafter, the case of the petitioner for the year under consideration was reopened by issuance of the show cause notice dated 12/02/2025 under section 148A(1) of the

NEUTRAL CITATION
2026:GUJHC:34851-DB

Act suggesting that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act. It is alleged that the petitioner has incorrectly claimed depreciation at the rate of 10% on buildings and 15% on plant and machinery, instead of 40% of the WDV (Written Down Value) method resulting into non-availability of depreciation at the end of the tax benefit period.

4.2. Vide letter dated 24/02/2025, the petitioner through its Chartered Accountant replied exhaustively and specifically to each and every allegation of the respondent and raised objections against the action of reopening the case of the petitioner for the year under consideration.

4.3. The respondent issued another Notice dated 20/05/2025 under Section 148A(1) read with Section 129 of the Act, to the petitioner to which the petitioner rendered its reply through its Chartered Accountant vide Letter dated 22/05/2025.

4.4. Thereafter, the respondent passed the impugned Order dated 28/06/2025 issued under Section 148A(3) of the Act holding that the income chargeable to tax in the hands of the petitioner, for the A.Y. 2020-21 amounting to Rs.15,91,72,922/- has escaped assessment within the meaning of Section 147 read with Section 148 of the Act in the form of wrong claim of deprecation and deduction under Section 80IA(4)(i) of the Act.

5. Learned Senior Counsel Mr. Tushar Hemani made following submissions on behalf of the petitioner:

NEUTRAL CITATION
2026:GUJHC:34851-DB

5.1. In the present case, the very pre-requisite for invoking Section 147 of the Act (i.e. escapement of income chargeable to tax) is not proved. The said fact is clearly evident from the following:

a. The sole ground for reopening of the assessment in the present case claiming depreciation at 10% and 15% instead of 40% has, in fact, resulted in higher business income and therefore cannot be construed as escapement.

b. The income of the petitioner from eligible business is undisputedly entitled to 100% deduction under Section 80IA(4)(i) of the Act. Even if higher depreciation at 40% were applied, the resultant business income and corresponding deduction would proportionately reduce, leaving total income at Nil. Hence, no income would become chargeable to tax as a result of such recomputation.

c. The original assessment was completed under Section 143(3) read with Section 144B of the Act on 30/08/2022 after scrutiny, where depreciation details were already available. The present proceedings therefore amount to a mere change of opinion, which is impermissible in law.

d. The provision of Section 152(2) of the Act entitles the petitioner to seek that the reassessment proceedings be dropped upon demonstrating that it had been assessed on an amount not lower than what it would have been rightly liable for even if the income alleged to have escaped had been taken into account. The petitioner has already offered a higher income to tax by claiming depreciation at 10% on building and 15% on plant and machinery instead of 40% as

NEUTRAL CITATION
2026:GUJHC:34851-DB

prescribed. Had the higher rate of depreciation been adopted by the petitioner, the business profits would have been lower, and accordingly, the deduction under Section 80IA(4)(i) of the Act, which is at 100% of eligible profits, would have reduced proportionately. As a result, the final total income would still have remained at Nil, and the tax liability under Section 115JB on book profit of Rs.23,50,77,870/- would remain unchanged. Even assuming the allegation of escaped income (i.e. lower depreciation claim) is accepted, the petitioner would not have been liable to any additional tax, and in fact, the amount assessed originally is not lower than the amount that would have been assessed had such alleged escapement been considered. The condition under Section 152(2) of the Act is therefore satisfied in letter and spirit.

e. It is further submitted that the petitioner has not challenged any part of the original assessment under Sections 246 to 248 or Section 264 of the Act. The assessment completed under Section 143(3) read with Section 144B of the Act on 30/08/2022 was accepted as such, and no appeal, revision, or rectification has been filed against it. As per the provision of Section 115JB of the Act which is a self-contained code for the purpose of computing the tax liability of a company where the tax on the total income computed under the regular provision of the Act is less than a prescribed percentage of "book profit", and for the A.Y. 2020-21, the applicable rate was 15% of book profit as per the first proviso to Section 115JB(1) of the Act, and accordingly, the petitioner computed it’s book profits as per

NEUTRAL CITATION
2026:GUJHC:34851-DB

Explanation 1 to Section 115JB(2) of the Act, amounting to Rs.23,50,77,870/, and discharged tax liability thereon at the applicable rate.

f. In support of his submission, he has placed reliance on the judgment of this Court in the case of Moto Tiles (P.) Ltd. vs. Assistant Commissioner of Income-Tax, Morbi Circle, [2016] 73 taxmann.com 176 (Gujarat). Thus, it is urged that, the impugned order may be quashed and set aside.

6. In response to the aforesaid submissions, learned Senior Standing Counsel Mr. Karan G. Sanghani, while placing reliance on the contents of the affidavit, has submitted that, the reassessment proceedings were initiated on the basis of material indicating excess allowance of depreciation by claiming depreciation at 10% or 15% instead of the applicable rates of 40%. It is contended that the excess allowance of depreciation directly impacts the computation of income under the head "Profits and Gains of Business or Profession" and constitutes a valid ground for reopening under Section 147 of the Act, hence, the petitioner's plea that higher depreciation results in higher income and therefore cannot constitute escapement is legally untenable.

6.1. It is further submitted that it cannot be said that the reopening of assessment is based on a mere "change of opinion". It is contended that mere availability of depreciation details on record at the time of original assessment does not *ipso facto* establish that the Assessing Officer had formed any conscious opinion on the correct

NEUTRAL CITATION
2026:GUJHC:34851-DB

rate of depreciation applicable to the assets in question. It is contended that in the present case, the assessment order passed under Section 143(3) read with Section 144B of the Act does not reflect any deliberation, discussion, or finding with regard to the correctness of depreciation claimed at 40%.

6.2. It is also contended that the liability under Section 115JB of the Act is only a mode of tax computation for a particular assessment year and does not validate or condone incorrect claims made under the normal provisions of the Act, and the petitioner's assumption that re-computation of depreciation would not affect tax liability is speculative and premature and the same is not correct.

7. We have heard the learned counsel appearing for the respective parties at length.

8. The petitioner filed its return under Section 139 of the Act for A.Y. 2020-21 on 31/10/2020 declaring its total income of Rs. Nil after claiming deduction under Section 80IA(4)(I) of the Act. The case of the petitioner was selected for scrutiny through CASS under Section 143 (3) of the Act and an assessment order was passed on 30.08.2022. The Assessing Officer did not alter the claim of depreciation.

9. Thereafter, a show cause notice dated 12/02/2025 was issued to the petitioner under Section 148A(1) of the Act alleging that income chargeable to tax has escaped assessment. It is alleged that the income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act, by recording that the audit party found that the

NEUTRAL CITATION
2026:GUJHC:34851-DB

petitioner who is engaged in waste water management services, incorrectly claimed depreciation at 10% on buildings and 15% on plant and machinery and the correct depreciation rate under the Income Tax Rules is 40%, for water supply and treatment projects under Section 80-IA(4)(i) of the Act, to the assets acquired and installed on or after 01/09/2002 and the lower depreciation claims of 10% and 15% on buildings and plant and machinery respectively, appeared to be aimed at tax evasion, to prevent a near-zero WDV method at the end of the tax benefit. Accordingly, it was alleged that the petitioner incorrectly claimed depreciation of Rs.15,91,72,922/-, which would have reduced the profit eligible for deduction under Section 80-IA(4)(i) of the Act. Thus, the respondent alleged escapement of income of Rs.15,91,72,922/- for the year under consideration.

10. The aforenoted facts about the filing of the return by the petitioner by offering book profit of Rs.23,50,77,870/- for taxation under Section 115 JB of the Act is not in dispute. It is also not in dispute that the petitioner is engaged in the business of infrastructure facility in respect of water treatment system which is eligible business as defined under Section 80AI(4) of the Act. Section 80IA of the Act stipulates deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc., and sub-section (4) of Section 80IA of the Act applies to enterprises like the petitioner, which carries the business of developing, operating and maintaining any infrastructure facility. The

NEUTRAL CITATION
2026:GUJHC:34851-DB

provision of Section 80IA of the Act is directly related to income derived under the head of “Profits and Gains from business and profession” and is eligible for 100% deduction. The petitioner has paid tax under section 115JB of the Act on the book profit of Rs.23,50,77,870/- as the return income was “Nil”. The same is duly certified by the Auditor.

11. In the present case, it is not disputed that the petitioner has already offered a higher income to tax by claiming depreciation at 10% on building and 15% on plant and machinery instead of 40% as prescribed. The petitioner had specifically contended that it had inadvertently claimed the depreciation at lower rates, and Assessing Officer precisely completed the assessment proceedings without altering the claim of depreciation since there would be no escapement of income as it would not have any impact on the total income as the profit and gains from business derived by the petitioner was eligible for 100% deduction under section 80IA(4)(i) of the Act. It is not controverted that even if the depreciation is allowed at enhanced rate of 40% in place of 10% in the case of building and 15% in the case of plant and machinery claimed in original return by the petitioner, the income chargeable to tax under the head 'Profits and Gains from Business and Profession' would get reduced and therefore there would be no escapement of income chargeable to tax, but the objection is on the claim of depreciation on WDV method. Thus, claiming depreciation at 40% instead of 10% will increase the total deductible expenses, which in turn will reduce the net taxable income chargeable under the head Profits and Gains from Business

NEUTRAL CITATION
2026:GUJHC:34851-DB

and Profession, hence there would not be any escapement of income chargeable to tax. The Assessing Officer has presumed that the petitioner will claim depreciation on higher WDV method after deduction benefit period under Section 80IA(4)(i) of the Act gets over, thereby reducing the taxable income. It is pertinent to note that the provision of Explanation 5 to section 32(1)(ii) of the Act confirms the applicability of the provision of sub-section (1) of Section 32 of the Act irrespective of the fact that whether the assesee has claimed deduction in respect of depreciation in computing its total income. Thus, the Assessing Officer while deciding the claim of depreciation has an authority to examine such claim on the prescribed rates under Rule 5(1) (Appendix-I) of the Income Tax Rules, 1962. Thus, it can be presumed that the Assessing Officer in the detailed scrutiny under Section 143(3) of the Act read with Section 144B of the Act was alive of the said statutory provisions and the rates prescribed therein, however the claim of depreciation was never altered to 40%, though the petitioner had inadvertently claimed at the normal rate of 10% and 15% percent on building and plant and machinery respectively, since it would not lead to escapement of income chargeable to tax for the income under “Profits and Gains from Business and Profession”.

12. The petitioner has not adopted the higher rate of depreciation which would lower his business profits resulting into proportionate lowering of deduction under Section 80IA(4)(i) of the Act, which is at 100% of eligible profits. The Assessing Officer has failed to properly

NEUTRAL CITATION
2026:GUJHC:34851-DB

appreciate the effect of the provisions as discussed herein above. The petitioner had computed its book profit as per Explanation-1 to Section 115JB(2) of the Act and discharged tax liability thereon at the applicable rate, which were duly accepted by the respondent authority and have not been disputed during the original scrutiny proceedings, and hence, the alleged escapement of income on account of claiming depreciation at 10% and 15%, instead of 40% has no bearing whatsoever on the determination of book profit under Section 115JB of the Act. Thus, the respondent erred in reopening the assessment by alleging that the income has escaped assessment on the same material by alleging that while accepting the original return the Assessing Officer has not considered the claim of deprecation appropriately.

13. We may now refer to the decision of the Coordinate Bench of this Court in case of ***Moto Tiles (P.) Ltd. (supra)***, wherein, on a similar issue, while examining the provision of Section 115 JB of the Act, the Court observed as thus:

> *"6.1 Insofar as the second contention raised on behalf of the petitioner that even if the total amount as proposed to be added by the Assessing Officer is sustained, there would be no increase in the tax liability of the petitioner, the learned counsel submitted that this is a case where no scrutiny assessment has been made under section 143(3) of the Act and that the petitioner had declared income of Rs.35.96 lacs under section115JB of the Act. It was submitted that in the present case, the tax levied under section 115JB of the Act is on the book profit. Even if any addition is made to the total income shown in the return of income filed, the same results into reduction of loss to be carried forward to subsequent years. In case of reduction in*

NEUTRAL CITATION
2026:GUJHC:34851-DB

loss in the year under consideration, the revenue effect will be in the year in which the assessee claims such set off. Therefore, the contention of the petitioner that there will be no revenue effect in its case is not correct. It was submitted that the tax payable/paid by the assessee under section 115JB of the Act is only the minimum alternative tax payable during the year under consideration and that the assessee is eligible to get the credit of such tax paid against the tax liability of the assessment year in which the tax becomes payable on the total income computed in accordance with the provisions of law. It was submitted that therefore, the plea taken by the petitioner that there would be no difference in tax liability deserves to be rejected.

xxx

6.3 It was further submitted that the petitioner in the computation of his income, has claimed loss which will be set off in the subsequent years. Hence, despite the fact that for the year under consideration, he may be assessed on the book profit under section 115JB of the Act, the loss claimed under the regular computation would remain and the petitioner would get the benefit thereof in subsequent years. Therefore, the income chargeable to tax has escaped assessment, though it may not have any effect on the tax liability in the year under consideration. It was submitted that here, there is a loss on which a right accrues as there is carry forward effect which would have a direct impact on future years. Benefit accrues to the assessee which is to the detriment of the revenue. It was, accordingly, urged that at the threshold, at the stage of notice under section 148 of the Act, the revenue should not be precluded from examining the issues. It was contended that the decision of this court in the case of PKM Advisory Services P. Ltd. v. Income Tax Officer (supra), would not be applicable to the facts of the present case, inasmuch as, in the said case, it was not a case where the assessee had declared a loss. It was submitted that insofar as the decision of this court in the case of India Gelatine and Chemicals Ltd. v. Assistant Commissioner of Income Tax (No.1) (supra) is concerned, though the same has been rendered in a similar set of facts, such decision has to be reconsidered.

xxx

NEUTRAL CITATION
2026:GUJHC:34851-DB

9. However, on behalf of the petitioner, it has been pointed out that in terms of the reasons recorded, the income chargeable to tax to the extent of Rs.81,18,000/- has escaped assessment. In the return of income filed by the petitioner, the petitioner has disclosed loss of Rs.77,51,810/- and the petitioner has been assessed at an income of Rs.35,96,518/- on the book profit under section 115JB of the Act. It has, accordingly, been contended that even after making the proposed addition, there would be no difference in the taxable income of the petitioner and it will still be governed by the provisions of section 115JB of the Act.

10. The learned counsel for the petitioner has also drawn the attention of the court to the provisions of section 152(2) of the Act, which provides that where an assessment is reopened under section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made. It was submitted that in view of the above provision, the proceedings are even otherwise required to be dropped because even if the income which is alleged to have escaped assessment is taken into account, the petitioner would not be assessed at a higher amount.

11. Insofar as the second contention raised on behalf of the petitioner is concerned, the controversy stands squarely concluded by the decision of this court in the case of India Gelatine and Chemicals Ltd. v. Assistant Commissioner of Income Tax (No.1) (supra) wherein, the court in a case where the assessee had declared a loss of Rs.1.44 crores under the normal computation and the assessment was framed on book profit of Rs.2.89, had held that even if the expenditure of Rs.116.86 lakhs is disallowed, there would be no resultant change in the petitioner's tax liability since the petitioner had already paid much higher tax and had allowed the petition. It appears that the revenue has accepted the said decision and has not challenged the same before the higher forum. The learned counsel

NEUTRAL CITATION
2026:GUJHC:34851-DB

for the respondent has urged that the decision requires reconsideration. Having regard to the facts and circumstances of the case, as well as the fact that the revenue has accepted the said decision, the court does not find any reason to refer the matter for consideration to a Larger Bench.

12. In the light of the decision of this court in the case of India Gelatine and Chemicals Ltd. v. Assistant Commissioner of Income Tax (No.1) (supra), having regard to the fact that even if the entire amount which is proposed to be added by the Assessing Officer is sustained, there would be no addition to the tax liability of the petitioner and the petitioner would still be governed by the provisions of section 115JB of the Act and assessed on the same book profit, it cannot be said that there was sufficient material before the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. The impugned notice issued under section 148 of the Act, therefore, cannot be sustained."

14. Thus, while placing reliance on the judgment rendered by Gujarat High Court in the case of *India Gelatine and Chemicals Ltd. v/s. ACIT, [2014] 364 ITR 649 (Guj.)*, the Coordinate Bench of this Court has held that even if the entire amount which is proposed to be added by the Assessing Officer is sustained, there would be no addition to tax liability of the assessee and the assessee would still be governed by the provisions of Section 115JB of the Act and assessed on the same book profit and it cannot be said that there was sufficient material before the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. The observations will squarely apply in the present case, since it is not denied that even if the claim of depreciation is applied at enhanced rate of 40% the same will have no bearing on the determination of book profit

NEUTRAL CITATION
2026:GUJHC:34851-DB

under section 115JB of the Act since book profit is premised on the duly audited statements of profit and loss prepared as per the provision of the Companies Act, 2013 and the prescribed Accounting standards duly certified by the auditors. It is not the case of the Revenue that claim of deprecation will have any impact on the profit and loss account. The Assessing Officer has not considered that the tax paid by the petitioner under the concept of MAT (Minimum Alternate Tax) calculated as per the provision of Section 115JB of the Act will remain unaltered on the enhanced rate of claim of depreciation at the rate of 40%.

15. Thus, in view of the undisputed facts, the ingredients of provision of Section 147 of the Act are not satisfied, as there is no escapement of income, which has chargeable to tax and the assessing officer has failed beyond the doubt that the income has escaped assessment. All the depreciation details were already available with the assessing officer in the detailed scrutiny, the subsequent re-opening of assessment is premised on mere change of opinion. Hence, the impugned order dated 28/06/2025 issued under Section 148A(3) of the Act is hereby quashed and set aside. Accordingly, the writ petition stands ***allowed***. Rule is made absolute. No order as to costs.

Sd/-

(A. S. SUPEHIA, J)

Sd/-

(VAIBHAVI D. NANAVATI,J)

Pradhyuman/63/