



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 14096 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14057 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Approved for Reporting	Yes	No
	✓	

O3 DEVELOPERS PVT. LTD.

Versus

INCOME TAX OFFICER, WARD 3(1)(1), AHMEDABAD

Appearance:

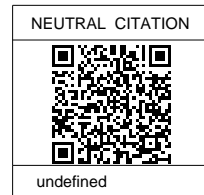
MR TUSHAR HEMANI, SENIOR ADVOCATE with MS VAIBHAVI K
 PARIKH(3238) for the Petitioner(s) No. 1
 AADITYA D BHATT(8580) for the Respondent(s) No. 1

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

Date : 09/06/2026
COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned Senior Advocate Mr.Tushar Hemani with learned advocate Ms.Vaibhavi K. Parikh for the petitioner and learned Senior Standing Counsel Mr.Aaditya D. Bhatt for the respondent.

2. **RULE** returnable forthwith. Learned Senior Standing Counsel, Mr.Aaditya Bhatt waives service of notice of rule for the respondent.

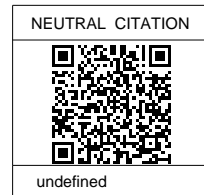


3. With consent of learned advocates appearing for the respective parties, the matter is taken up for final hearing. Special Civil Application No.14057 of 2025 is treated as a lead matter and the facts are narrated from the said petition, which read thus:

3.1 The petitioner is a company incorporated under the Companies Act, 1956 and majority of its shareholders are citizens of India. The petitioner is therefore, entitled to the constitutional rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India. The respondent is a 'State' within the meaning of Article 12 of the Constitution of India.

3.2 The respondent issued a show cause notice dated 28.03.2025 under sub-section (1) of Section 148A of the Income Tax Act, 1961 (for short 'the Act') whereby, the petitioner was called upon to show cause as to why notice under Section 148 of the Act should not be issued for the year under consideration. The petitioner, vide letter dated 21.04.2025, furnished a detailed reply to the said show cause notice.

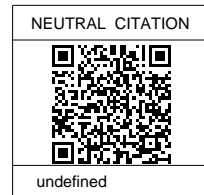
4. The present writ petitions are filed challenging the action of the respondent for reopening the assessment proceedings. In Special Civil Application No.14057 of 2025, the petitioner has challenged the notice dated 26.06.2025 issued under Section 148 of the Act as well as the order dated 26.06.2025 passed under Section 148A(3) of the Act for the Assessment Year (for short 'A.Y.') 2019-20, whereas, in Special Civil



Application No.14096 of 2025, the petitioner has challenged the notice dated 26.06.2025 issued under Section 148 of the Act as well as the order dated 26.06.2025 passed under Section 148A(3) of the Act for the A.Y. 2021-22.

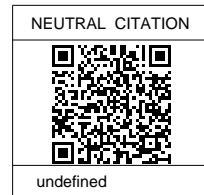
5. At the outset, we have noticed that in the order dated 13.10.2025, the Coordinate Bench, while recording the submissions advanced by learned Senior Advocate Mr. Tushar Hemani, has mentioned the order dated 01.04.2025 passed in Special Civil Application No.334 of 2022, which has been pointed out to this Court by learned Senior Advocate and has submitted that for the A.Y. 2017-18, in the similar allegations, the re-opening of the assessment was undertaken by the department, which was assailed by the petitioner and ultimately, the Coordinate Bench by the judgment and order dated 01.04.2025, has allowed the writ petition by setting aside the action of the respondent department of re-opening the assessment for A.Y. 2017-18. Hence, it is urged by learned Senior Advocate Mr.Hemani that the present writ petitions may also be allowed.

6. While referring to the contents of the reply dated 21.04.2025 filed by the petitioner in response to the show cause notice dated 28.03.2025 issued under Section 148A(1) of the Act for A.Y. 2019-20, he has submitted that the petitioner has in detail explained all the entries in the bank account, which are duly recorded in the books of accounts and after considering the income as per the audited books of accounts, the return of income was filed, which was accepted by the department. It is submitted that the re-opening is



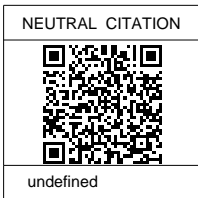
premised only on the sole reason, which has been recorded in the impugned notice as well as the order that the transactions of the petitioner are not in coherence with the business. It is submitted that the detailed bifurcation of the credit entries to the tune of Rs.977 crores were furnished by the petitioner in support of such transaction along with loan transactions, bank statements. However, the respondents have on the basis of conduct and surmises formed an opinion that there is escapement of income chargeable to tax to the tune of Rs.9,77,98,38,000/-. While referring to the provisions of Section 147 of the Act, it is submitted that the provisions of Section 147 of the Act are not attracted in the present case as there is no income chargeable to tax which has escaped assessment. He has referred to the old provisions of Section 147 of the Act, which were operated till 31.03.2021, which had the words “reason to believe” that any income chargeable to tax has escaped assessment whereas, with effect from 01.04.2021, the provisions of Section 147 of the Act can be invoked if any income chargeable to tax has escaped assessment.

6.1 Regarding allegation doubting the business of the petitioner and not possessing NBFC (Non-Banking Financial Company) license, it submitted that such allegations are ill-founded since the question is not about lending but about borrowing and secondly, borrowing from group concerns does not convert the petitioner into NBFC. It is submitted that this aspect was also considered by the Coordinate Bench in the writ petition being Special Civil Application No.334 of 2022.



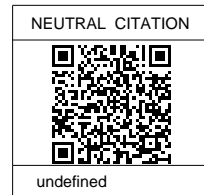
6.2 While dealing with the allegation about no interest having been charged in respect to loan transaction from certain parties, it is contended that the same *ipso facto* would not mean that there is escapement of income since it would be commercial sense of the petitioner whether to charge interest or not and moreover, re-opening is proposed on the ground of credits in the bank account and not for charging interest on loans and hence, the final order under Section 148A(3) of the Act which is premised on such observation, is required to be quashed.

6.3 Another contention is raised by learned Senior Advocate, Mr. Hemani with regard to the non supply of supporting documents relating to the terms and conditions/written agreements of loan transactions and it is contended that all the entities with whom the petitioner has entered transactions, are filing regular returns and the same is easily accessible by the respondents. Even if, it is assumed that such documents are not available, the same would not lead to an opinion that there is escapement of income so long the parties who have given the money are regular filers of returns and such entries are reflected in the books of accounts. It is submitted that the respondents never called upon to prove the detail of M2M loss of Rs.15,18,89,183/- and the same was not also reflected in the initial show cause notice and hence, the respondents without providing any opportunity, gave finding on M2M loss at the stage of final order under Section 148A(3) of the Act, which is not permissible.



6.4 Finally, it is contended that the respondent has also premised the finding on purchase of bullion, which is also illegal and arbitrary since there is no information available with the respondent department to substantiate such transaction. Thus, it is submitted that in absence of any efforts having been made by the respondent to verify the genuineness of the loan transactions with the parties with whom the petitioner has transacted, the re-opening of the assessment is impermissible and it cannot be said that there is escapement of income chargeable to tax.

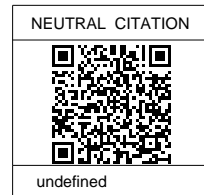
7. Opposing the present writ petitions and submissions of learned Senior Advocate Mr.Tushar Hemani, learned Senior Standing Counsel, Mr.Aaditya Bhatt appearing for the revenue while pointing out the averments of the affidavit-in-reply filed in Special Civil Application No.14096 of 2025, has submitted that the judgment rendered by this Court in case of the petitioner for A.Y. 2017-18 in Special Civil Application No.334 of 2022 cannot come to the rescue of the petitioner since the said judgment applies to the old regime of Section 147 of the Act i.e. pre-01.04.2021, which did not have the expression "actual escapement of income beyond any shadow of doubt". It is thus submitted that in the new regime governed by the substituted Sections 147, 148 and 148A of the Act, the threshold has been substantially lowered to merely requiring "information which suggests that the income chargeable to tax has escaped assessment". It is submitted that the Assessing officer has specifically recorded that there was huge transaction of Rs.422 crores in unsecured loans and



repayments without there being any supporting evidences such as documentation of terms and condition/written arguments and hence, such transaction would become suspicious which would satisfy the expression “information which suggests escapement”. It is submitted that for the A.Y. 2017-18, which was examined by this Court in the aforementioned writ petition, this Court had quashed the re-opening since the Assessing Officer had failed to refer to any evidence much less a single evidence recording reasons whereas, in the present case, there is a live nexus which suggests that there is escapement of income chargeable to tax. Thus, it is urged that at this preliminary stage, this Court may not called the legitimate statutory investigation and of re-opening the assessment.

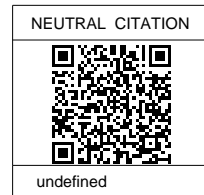
8. We have heard the learned advocates appearing for the respective parties. The facts which are established from the pleadings and the documents on record are that the petitioner has been roped in the rigors of reassessment proceedings for A.Y. 2018-19, 2019-20 and 2020-21 by alleging that the bank account statements and details, which has been supplied by the petitioner, exhibit huge fictitious transactions of Rs.9,77,98,38,000/- which remained unexplained for the A.Y. 2018-19. Similar allegations are made for the A.Y. 2019-20 and 2020-21 where the amount varies; (i) for A.Y. 2019-20 – Rs.1253,43,17,000/- and; (ii) for A.Y. 2020-21 – Rs.4,22,06,35,000/-.

9. It is established from record that for the A.Y. 2017-18, the assessment was reopened by leveling almost similar



allegations and accordingly, a notice dated 28.10.2021 was issued under Section 143(2) of the Act alleging that the assessee (petitioner) has received in his bank account cash deposits and credit entries of Rs.3,37,84,21,787/- and such income of the assessee does not commensurate with its huge cash deposits and credit entry and thus, these entries remained unexplained since the assessee has failed to disclose fully and truly all the material facts necessary for the assessment. There was another allegation which was also levelled against the present petitioner that for the A.Y. 2017-18 to the extent that it had also taken accommodation entry of Rs.5,57,89,121/- from one Kushal Limited, Ahmedabad, wherein a search has been conducted. The revenue had made almost similar submissions before the Coordinate Bench and it was contended that the material before the Assessing Officer would satisfy the expression "reason to believe" that the income chargeable to tax has escaped assessment. It was also contended that the case of assessee (present petitioner) has been identified as potential case flagged by the Directorate of Income Tax (DGIT) (Systems) after risk profiling based on inquiry reports and findings of the DGIT (Investigation) and Directorate of Intelligence & Criminal Investigation.

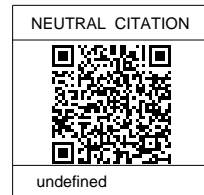
9.1 After considering the respective submissions, the Coordinate Bench in the writ petition filed by the petitioner being Special Civil Application No.334 of 2022, challenging reopening for Assessment Year 2017-18, vide judgment and order dated 01.04.2025, set aside the impugned notices of reopening the assessment by holding that there was no live



nexus of the information with the transactions recorded and audited as per the books of accounts of the petitioner to come to even *prima facie* conclusion that the income has escaped the assessment. It is not in dispute that the said judgment has been accepted by the revenue.

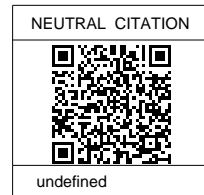
10. Coming to the present case, the revenue has attempted to distinguish the aforesaid judgment by resorting to the amended provisions of Section 147 of the Act. Up to 31.03.2021, the provisions of Section 147 of the Act could have been invoked by the revenue if the Assessing Officer has “reason to believe” that any income chargeable to tax has escaped assessment for any assessment year whereas, w.e.f. 01.04.2021, the aforesaid expression has been replaced by “if any income chargeable to tax has escaped assessment”.

10.1 In the present case, we have noticed upon the scrutiny of the impugned show cause notice dated 26.06.2025 issued under Section 148 of the Act as well as from the order dated 26.06.2025 passed under Section 148A(3) of the Act that, to the extent that it is specifically recorded by the Assessing Officer that on the analysis of the bank account statement, it is noticed that during the period under consideration, major debit/credit entities as mentioned in the impugned notice as well as the order and the details of such entities on insight portal, it is observed that “*these entities regularly filed the Return of Income.*” Thus, the Assessing Officer in the impugned show cause notice as well as in the order, has not doubted the genuineness of entities with whom the petitioner has transacted and obtained loans. The reason for re-opening



the assessment appears to be that the huge transactions undertaken by the petitioner are incoherence with his business. It is not in dispute that the petitioner in his reply dated 21.04.2025 to the show cause notice had categorically provided all the entries recorded in the books of accounts and audited books of accounts, which were already examined while processing the original income returns. The petitioner had also explained the payments like taxes, rent or utility and had recorded that all the entities with whom the petitioner had undertaken the transactions are regularly filing their Return of Income. Thus, it is not in dispute that all the entries appearing in the bank account are recorded in the books of accounts, which are taken into consideration while filing the returns. All the entities from whom the credit is taken are group entities which are regularly filing the returns.

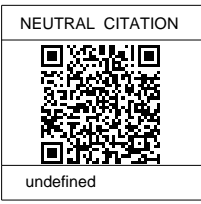
11. In wake of the aforesaid undisputed facts, the re-opening on a presumption and assumption that the bank transactions are not in coherence with the business activity of the petitioner, is impermissible since the bank accounts of all the entities reflects all kinds of credits, turnovers, loans, advances, investments etc.. All these transactions are explained by the petitioner and nothing is shown to this Court as to whether any action of re-opening is taken against the entities with whom the petitioner has transacted. Merely, because there are high value transactions in the bank accounts of the petitioner, the same would not *ipso facto* mean that there is escapement of income chargeable to tax without there being any iota of evidence. The assumptions of the respondent about not



possessing any NBFC license and leading to a conclusion that the credits would become escapement, is also liable to be discarded since borrowing from the group concerns does not convert the petitioner into NBFC and hence, the absence or presence of NBFC license would not result into escapement of income. Similarly, the absence of charging of interest on the loan transaction will also not lead to assumption that income chargeable to tax has escaped assessment.

12. So far as the allegation with regard to M2M loss of Rs.15,18,89,183/- is concerned, we have noticed that the petitioner was never called upon in the notice dated 28.03.2025 issued under Section 148A(1) of the Act to explain the M2M loss of Rs.15,18,89,183/-. The petitioner had also in its financial statements submitted such explanation of the transaction and are reflected in the bank account and hence, without providing any prior opportunity, the respondent has fell in error giving a finding on M2M loss at the stage of passing final order under Section 148A(3) of the Act. Similar for the allegation of purchase of bullion also, we find that there is no material worth the name is referred accept the bald allegations.

13. On the overall analysis of the matter and in light of the earlier order which has been passed by this Court and has been accepted by the respondent revenue, the writ petitions need acceptance and the same are **allowed**. The notice dated 26.06.2025 issued under Section 148 of the Act and the order dated 26.06.2025 passed under Section 148A(3) of the Act for the A.Y. 2019-20 in Special Civil Application No.14057 of 2025



as also, the notice dated 26.06.2025 issued under Section 148 of the Act as well as the order dated 26.06.2025 passed under Section 148A(3) of the Act for the A.Y. 2021-22 in Special Civil Application No.14096 of 2025, are quashed and set aside. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI, J)

NEHA/15