IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 5025 of 2026

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

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Approved for Reporting	Yes	No
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LODESTONE SOFTWARE SERVICES PRIVATE LIMITED
Versus
UNION OF INDIA & ORS.

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Appearance:
MS SANGEETA PAHWA for THAKKAR AND PAHWA ADVOCATES(1357) for the Petitioner(s) No. 1
DEV D PATEL(8264) for the Respondent(s) No. 2
MR PRADIP D BHATE(1523) for the Respondent(s) No. 1
NOTICE THROUGH SPEED POST SERVED for the Respondent(s) No. 3

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

Date : 17/09/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. With the consent of learned advocates appearing for the respective parties, the matter is taken up for final hearing.

2. By way of present writ petition, the petitioner has assailed the order dated 16.03.2026 issued by respondent no.2 under Section 148A(3) of the Income Tax Act, 1961 (for short 'the Act') as well as notice issued under Section 148 of the Act, seeking to reopen the assessment for Assessment Year (A.Y)2022-2023.

FACTS OF THE CASE

3. The petitioner filed its return of income for the Assessment Year 2022-2023 on 31.12.2022, declaring total income of Rs.32,13,74,078/-. The income tax return was filed pursuant to the statutory audit report carried out by an independent auditor

on 06.09.2022 under section 44AB of the Act. After a period of six months from filing the return a Notice dated 02.06.2023 was issued by the Assessing Officer under Section 143(2) of the Act. Thereafter, respondent no.2 issued another Notice dated 12.10.2023 under Section 142(1) of the Act, asking the petitioner to provide the copy of the income tax return, computation of income, statement of all bank accounts, brief discussion of the business activity, and a copy of audit report. Accordingly, the petitioner provided all the details.

3.1 The Assessing Officer has also forwarded a questionnaire relating to the queries raised for Tax Deducted at Source (TDS) calculation the petitioner. Accordingly, vide its reply dated 24.01.2024 submitted the requisite details and reported that the TDS amounting to Rs.17,80,47,283/- has been duly deducted on salary payments aggregating to Rs.63,84,93,646/-. Ultimately, the Assessing Officer passed the assessment order dated 04.03.2024 under Section 143(3) Section 144B of the Act by accepting the explanation tendered by the petitioner. The total income of the assessee was assessed at Rs.32,13,74,078/-. Thus, the return of the income was accepted and accordingly, scrutiny assessment under Section 143(3) of the Act was passed on 04.03.2024.

3.2 After a period of almost nine months on 18.12.2024 an audit objection was raised by the Revenue relating to the irregular exemptions/deductions. Subsequently, a show-cause notice under Section 148A of the Act was issued on 01.07.2026 for reopening the assessment by alleging that the income chargeable to tax has escaped assessment within the meaning of

Section 147 of the Act. The notice stipulates that the assessee had claimed the amount of Rs.17,54,62,925/- as deduction under Section 43B of the Act for TDS, however, the same is not admissible as deduction, since the TDS does not constitute an expense but is a tax deducted from the salary payments.

3.3 In response to the show-cause notice the petitioner submitted its detailed reply on 29.01.2026 categorically explaining that the TDS has neither been shown as expenditure nor claimed as deduction. The petitioner clarified that the Assessing Officer has only considered the Tax Audit report and not considered the income tax return in which the correct position were reflected. The respondent no.2 thereafter has passed the impugned order dated 16.03.2026 alleging that the income chargeable to tax has escaped for Assessment Year 2022-23, since there is a difference between salary expenditure and quantum of TDS on such expenses.

3.4 Simultaneously, a Notice under Section 148 of the Act dated 16.03.2026 was also issued requiring the petitioner to furnish a return of income in the prescribed form for A.Y 2022-23. The impugned order as well as the notice is being challenged in the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER

4. Learned advocate Ms. Pahwa at the outset has submitted that the impugned notice as well as the order are required to be quashed and set aside since it is based on incorrect factual aspects relating to the TDS. She has submitted that the petitioner has never claimed the TDS of Rs.17,54,62,925/- as

expenditure or deduction in the income tax return and ITR-6. She has submitted that the petitioner has claimed deduction of Rs.51,94,482/- under Section 43B of the Act, for leave enchashment. and all the details were produced in the return and also in reply pursuant to the notice issued under Section143 of the Act. She has submitted that the Assessing Officer has accepted the explanation tendered by the petitioner in the original scrutiny assessment proceedings and the query relating to the TDS of Rs.17,54,62,925/- was satisfied by the petitioner and accordingly, the scrutiny assessment order under Section 143(3) of the Act was passed accepting the return filed.

4.1 Thus, it is submitted that the reopening is nothing but a change of opinion as all the details were already available with the Assessing Officer, during the original assessment proceedings and the petitioner has not suppressed anything. She has submitted that the ingredients of Section 147 do not get satisfied in the present case and hence, the reopening of the assessment may be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

5. Opposing the forgoing submissions learned Senior Standing counsel Mr. Dev D. Patel has urged that at this stage, the reopening of the assessment may not be interfered with as the assessing officer has precisely relied upon the audit objections. It is submitted that the TDS has been deducted on the amount of Rs.174,841.030/- towards employee benefit expenses and on the amount of Rs.449,399.00/- towards one-time reward incentives paid to the employees. It is submitted that the foundation of the proceedings remain unchanged

throughout, namely the examination of tax treatment and implications of the amount of Rs.17,54,62,925/- reported by the petitioner. The observations regarding salary expenditure and employee benefit expenses were only consequential and incidental to the verification of the petitioner's explanation and were recorded for the limited purpose of determining whether the information available on record suggested escapement of income warranting further examination in reassessment proceedings.

5.1 It is thus submitted that it cannot be said that the impugned order travels beyond the show-cause notice or that the petitioner was taken by surprise as the petitioner was duly informed of the information forming the basis of the proceedings, was furnished an opportunity to submit its objections and supporting documents, and its reply was duly considered before passing the impugned order. Accordingly, there is no violation of the principles of natural justice as alleged by the petitioner.

5.2 It is submitted that in the present case proceedings were initiated on the basis of an audit objection which constituted information available with the Assessing Officer within the meaning of the provisions of the Act. The said audit objection specifically points out that an amount of Rs.17,54,62,925/- reported under Section 43B of the Act, required examination and that the assessment had not been made in accordance with the provisions of the Act. It is submitted that the information available on record provided a live and rational nexus for the formation of a *prima facie* belief that income chargeable to tax had escaped assessment for the relevant assessment year. Therefore, the proceedings initiated under Section 148A of the Act and the consequential action taken thereunder are well within the jurisdiction of the Assessing Officer. It is therefore urged that the present writ petition may be rejected.

ANALYSIS & OPINION

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

7. The facts which are established from the record and pleadings are that the petitioner filed its ITR for A.Y 2022-23 on 31.12.2022 declaring total income of Rs.32,13,74,078/-. The return of income was selected for scrutiny assessment. During the scrutiny assessment the petitioner was specifically called upon by the assessing officer to reconcile all the expenses debited in profit and loss account with the TDS deduced therein and paid to the government account before the due date of filing of return of income along with evidence of such payment. The petitioner was also called upon the detailed working of disallowance with the computation of the income to show that the same has been considered while computing the total income. The petitioner was further called upon to provide month wise details of cash deposits, the details of raw materials used for manufactures, capital goods purchased and traded goods, party wise details of all expenses, copies of ledger account, details of borrowings and liabilities, statutory liabilities required to be paid before the due date of filing of return of income and disallowance required to be made under Section 43 B of the Act, details of late payment of provident funds, employees ESIC contribution made by the employees to the Government account etc.,

7.1 The petitioner accordingly supplied all the details to the Assessing Officer, with regard to the details of TDS deducted during the financial year 2021-2022 vide its communication dated 24.01.2024 and explained in detail about the TDS deduction. Thereafter, the Assessing Officer passed an order under Section 143(3) of the Act dated 04.03.2024 by recording that “the facts of the case suggests that no adverse inference was drawn and the return of income of the assessee is accepted”.

7.2 Thereafter, it appears that an audit objection was raised with regard to the TDS and the audit observations dated 08.12.2024 reflects that it is alleged that the petitioner has incorrectly claimed the TDS as expenses whereas TDS is not an expense and hence the deduction claimed under Section 143 B of the Act of Rs.17,54,62,925/- is required to be disallowed and added to the total income of the assessee. The petitioner in its reply dated 29.01.2026, to the show-cause notice dated 07.01.2026 gave its detailed reply pointing out that the petitioners have not shown TDS as expenditure or deduction in the ITR and the audit report is premised on the tax audit reports filed by the petitioner. However, it appears that without application of mind the respondent has passed the impugned order dated 16.03.2026 under the provisions of Section 148 of the Act.

7.3 Upon a careful examination of the audit report and the ITR filed by the petitioner we find that the petitioner in fact claimed deduction of Rs.51,94,482/- under Section 43 B of the Act for leave encashment. The petitioner in the income tax return has not claimed deduction of Rs.17,74,62,925/-. In the scrutiny assessment the petitioner had satisfied the Assessing Officer relating to the deductions it appears that no further queries were raised and the explanation of the petitioner was accepted and accordingly, an assessment order under Section 143(3) of the Act was passed.

8. We also find that the respondent no.2 failed to appreciate that the salary expenses and the employees benefits costs were shown under two heads in the financial statements. It appears that because of misreading of the audit report the amount of TDS which remained unpaid as on 31.03.2022, but has been paid before the due date of filing of the income tax return, has been treated as deduction claimed under 43B of the Act. It only represents TDS on salary of Rs.17,08,99,489/-, TDS on contractor of Rs.3,704/- and TDS on consultancy of Rs.43,59,830/- and on professional fees TDS of Rs.1,99,902/-. The petitioner has not claimed TDS as an expenditure or claimed the amount of Rs.17,54,62,925/- as a deduction under Section 43B of the Act.

9. Hence, we are of the considered opinion that the impugned order as well as show-cause notice are required to be quashed and set aside for non-application of mind by the respondent-authority, and also for the reason that the reopening is nothing but a change of opinion since all the materials were available with the Assessing Officer at the time of original scrutiny proceedings and there is no fresh or tangible material available with the Assessing Officer to reopen the assessment, which could suggest that the income chargeable to tax has escaped assessment.

10. Accordingly, the present writ petition ***succeeds.*** The impugned Show-cause notice as well as consequential order are hereby quashed and set aside.

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(A. S. SUPEHIA, J)

sd/-
(VAIBHAVI D. NANAVATI,J)

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