IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1486/Bang/2019
Assessment Year : 2009-10

M/s. Nitesh Estates Ltd., Nitesh Time Square, 7th Floor, #8, M.G. Road, Bangalore – 560 001. PAN: AABCN9267C	**Vs.**	The Deputy Commissioner of Income Tax, Circle – 5 [1][2], Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Sankar Ganesh K, JCIT (DR)

Date of Hearing	:	04-02-2022
Date of Pronouncement	:	20-04-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 28/03/2019 passed by the Ld. CIT(A)-5, Bangalore for assessment year 2009-10 on following grounds of appeal:

> *"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
> *2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.*
> *3. The learned CIT[A] ought to have appreciated that there was no fresh material to show that income had escaped assessment especially when there was a scrutiny*

assessment u/s.143[3] of the Act, earlier and consequently, the re-opening of the assessment on change of opinion is bad in law and consequently, the same requires to be cancelled.

4. Without prejudice to the above, the learned CIT[A] ought to have appreciated that there was no bonafide belief that the income had escaped assessment having regard to the reasons recorded, which only showed suspicion in the mind of the learned A.O. and consequently, the re-opening of the assessment being unjustified ought to have been cancelled.

5. Without prejudice to the above, the learned CIT[A] is not justified in upholding the assessment order passed by the learned A.O. without first disposing off the objections filed by the appellant for reopening of the assessment by passing a speaking order and consequently, the assessment order passed being a nullity ought to have been cancelled.

6. Without prejudice to the above, the learned CIT[A] is not justified in upholding the disallowance of a sum of Rs.1,02,42,949/- being the business loss under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. Brief facts of the case are as under:

2.1 Assessee is a company and carries on with business of property development and maintenance and execution of engineering contracts. For year under consideration, assessee filed its return of income on 30/09/2009 declaring total income of ₹7,60,68,990/-. The case was selected for scrutiny and assessment was completed under section 143 (3) of the Act on 30/12/2011.

2.2 Subsequently notice under section 148 was issued to assessee dated 06/03/2014. Assessee vide letter dated 04/04/2014 submitted that the original return filed by assessee on 30/09/2009 may be treated as return filed in view of the notice under section 148 of the Act. The Ld.AO vide letter dated 04/07/2014 provided reasons recorded which is reproduced as under:

> *"The assessee filed the return of income on 30.09.2009 declaring income of Rs.7,60,68,990/-. The assessment in this case was completed u/s. 143(3) on 30.12.2011 determining taxable income at Rs.8,26,12,9701.*
>
> *On perusal of records, it is noticed that the assessee was allotted land by KIADB on Lease-cum-Sale basis at a cost of Rs.5,43,72,833/- and the lease was registered in favour of the company during May, 2007 in setting up of Industrial Projects. However, the company has surrendered the aforesaid land to KIADB in March, 2009 and received sale *proceeds of Rs.4,41,29,885/-, thereby incurring a loss of Rs.1,02,42,949/-. The assessee has admitted income of Rs.58,37,87,678/- on contract activities as against Rs.7,87,11,363/- received by him as per TDS Certificates, and thereby claiming refund of Rs.1,77,72,931/-. The balance of Rs.16,49,3683/- was termed as unbilled revenue and the same could have been offered as income as the assessee was following mercantile system of accounting. Therefore, I have reason to believe that the income chargeable to tax has escaped assessment as per provisions of Sec.147 of the IT Act."*

3. The assessee filed its objections. The objections filed by assessee has been summarised by the Ld.AO in para 3 as under:

> *"3. The main objection of the AR is that the reopening of assessment is valid only when income chargeable to tax which escaped assessment comes to notice subsequently. In the instant case the AR further argues that the details relating to the case were made available to the AO during the course of original assessment proceedings who had examined the issue and was satisfied with the explanation and that there is no fresh material to conclude income as escaped assessment."*

4. It was contended by the assessee that, no fresh materials were available for reopening a completed assessment. The assessee

had also filed submissions on merits of the case. The Ld.AO on considering the submissions, completed the assessment by disallowing the laws of ₹ 1,02,42,949/- in the hands of assessee. Aggrieved by the additions made by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

The Ld.CIT(A) dismissed the legal ground challenging the reopening of assessment raised by assessee. On merits, the Ld.CIT(A) observed and held as under:

> *"7.3. The issue on merits relates to the AO's action of disallowing the assessee's claim of Rs 1,02,42,940/- under the head 'Business Income'. which pertains to certain property sold at Mangalore, that was originally allotted by KADB. The Assessee's contention before the AO and the undersigned during the appeal-proceedings is that, the loss was allowable as business loss, as the impugned asset was an important part of assessee's business of development and real-estate activity. it is thus claimed that any loss on, the surrender / sale of the property would essentially constitute business loss, which ought to be allowed.*
>
> *The Assessee's contentions with respect to the claim as revenue-loss is not found to be acceptable in view of the facts brought on record by the AO. The AO has categorically recorded a finding in the impugned order to the effect that, after examination of the assessee's account, it was noticed that the impugned asset was not classified as stock-in-trade but was clearly reflected in the fixed-asset schedule of the appellant. This constitutes a conclusive proof that the asset under reference represents a capital asset. In view of the clear facts available and in light of the judicial position on the issue, it is to be held that the asset in question and any losses accruing from its sale / surrender would constitute only a capital loss. There is thus no justification for allowing the same as a revenue-loss as claimed by the appellant. In background of these facts, the assessee's grounds of appeal cannot be accepted. The same are therefore disallowed."*

Aggrieved by the order of the Ld.CIT(A), assessee is an appeal before the *Tribunal.*

Application for condonation of delay

5. At the outset the Ld.AR submitted that there is a delay of 10 days in filing the present appeal. The Ld.AR has filed affidavit of assessee dated 02/02/2022 in support of the reasonable cause in filing the appeal belatedly.

He submitted that the appeal should have been filed on or before 09/06/2019, however due to certain financial crisis assessee was in short of staff, and filing of appeal within the period of limitation escaped sight. He thus, prayed for the condonation of delay by 10 days.

On the contrary, the Ld.CIT.DR vehemently opposed the application filed by assessee seeking to condone the delay in filing the present appeal.

We have perused submissions advanced by both sides in light of records placed before us.

6. The delay in filing the present appeal is caused due to the shortfall of staff with the assessee, and therefore could not communicate the impugned order to the concerned authorised representative within the required time frame. We do not find any mala fide intention on behalf of assessee by delaying the present appeal to be filed before the *Tribunal*. As a reasonable cause made out by assessee, which has not been countered by the revenue with any contrary materials, in the interest of justice we condone the delay of 10 days in filing the present appeal before the *Tribunal*.

Accordingly the appeal filed by assessee stands admitted to be adjudicated on issues raised.

7. Ground No.2: The Ld.AR at the outset stressed on ground 2 wherein the jurisdiction of issue of notice under section 148 of the Act, has been challenged by assessee.

The Ld.AR submitted that the re-assessment order passed by the Ld.AO do not fulfill the requirements for reopening of the assessment. He submitted that, there was only 'reason to suspect' that, income has escaped assessment, and the Ld.AO do not have any 'reason to believe'. The Ld.AR submitted that the reopening cannot be initiated, without there being a reason to believe that income has escaped assessment.

8. It is submitted by the Ld.AR that, all the details relied by the Ld.AO for issuance of notice u/s. 148 were filed before the Ld.AO during original assessment proceedings. It is submitted that, the Ld.AO does not have any fresh materials, based on which 'reasonable belief' could be formed that income has escaped assessment in order to justify the notice u/s. 148.

9. Referring to the reasons recorded, the Ld.AR submitted that, the 'reason to believe' by the Ld.AO may be subjective, however the reasons inducing the said belief must always be objective. The objective reasons should lead to the formation of the subjective belief that, income escaped assessment. Thus Ld.AR submitted that, there must be a live link between the reasons recorded and material, based on which the reassessment proceedings are to be initiated. He placed reliance on the following decision in support of this contention:

1. *M/s. Calcutta Discount Co.,* reported in *41 ITR 191 [SC]*
2. *Gangasaran* reported in *130 ITR 1*
3. *Chuharmal Rajpal* reported in *79 ITR 603 [SC]*
4. *Lakhmani Mewal Das* reported in *103 ITR 437 [SC]*
5. *Navodaya Grama Vikas Charitable Trust vs. ACIT* in *ITA Nos. 552 & 553/Bang/2018* by order dt. *16.10.2020.*

10. On the other hand, Ld.CIT.DR submitted that, the authority below was justified in reopening the assessment as assessee had incurred a loss of ₹ 1,02,42,949/- on surrender of land to KIADB. He supported the observations of the Ld. CIT(A) on this issue. On merits of the case, the Ld.CIT.DR relied on the decision of *Hon'ble Supreme Court* in case of *CIT vs. Dr.V.P. Gopinath* reported in *248 ITR 449.*

We have perused submissions advanced by both sides in light of records placed before us.

11. In our view, the validity of reopening of assessment will have to be determined with reference to the reasons recorded for reopening. Before issuing notice under section 148 of the Act, the Ld.AO has to see, whether, there is a prima facie tangible material based on which such notice could be justified. This could be ascertained only by application of mind to the materials to conclude that, the Ld.AO has 'reasons to believe', that income escaped assessment. Unless this basic jurisdictional requirement is satisfied issuance of notice under section 148 cannot be validated.

12. In the present facts of the case the Ld.AO in the reasons recorded observers that assessee has incurred loss of ₹ 1,02,42,949/-, against surrender of lands to KIADB in March 2009. It is further noticed by Ld.AO that, assessee declared income of ₹ 58,37,87,687/, as against ₹ 7,87,11,363/- received by assessee as per the TDS certificate. This in our understanding, the reason so recorded by the Ld.AO, do not lead to the formation of belief that income has escaped assessment. This even does not fall under the category of 'reason to believe' leave alone 'formation of reason to believe'. In our view the reasons recorded do not have any application of mind by the Ld.AO as it does not have any link with

the materials available on record or any evidence to subjective opinion, that could have been formed otherwise.

13. We also do not find any allegation by Ld.AO that, assessee has not fully and truly disclosed all material facts necessary for assessment. At this juncture, we refer to the decision of *Hon'ble Supreme Court* in case of *Indian oil Corporation vs ITO* reported in *159 ITR 956* wherein, *Hon'ble court* held that, the 'reason to believe' is not the same thing as, 'reason to suspect'. *Hon'ble Court* also held that, the 'reason to suspect' is narrower than, 'reason to believe' and that, where the reasons recorded, merely showed that, there was a mere suspicion that income has escaped assessment, it would not amount to 'reason to believe' and hence, the reopening of assessment would not be proper.

14. Further in case of *Navodaya Grama Vikas Charitable Trust vs. ACIT (supra), Coordinate Bench* of this *Tribunal* in identical circumstances observed as under:

> *6. We have heard both the parties and perused the material on record. At this stage, it is appropriate to mention the principles of law governing reassessment as below :*
> *(i) The Court should be guided by the reasons recorded for the reassessment and not by the reasons or explanation given by the Assessing Officer at a later stage in respect of the notice of reassessment. To put it in other words, having regard to the entire scheme and the purpose of the Act, the validity of the assumption of jurisdiction under Section 147 can be tested only by reference to the reasons recorded under Section 148(2) of the Act and the Assessing Officer is not authorized to refer to any other reason even if it can be otherwise inferred or gathered from the records. The Assessing Officer is confined to the recorded reasons to support the assumption of jurisdiction.*
> *He cannot record only some of the reasons and keep the others upto his sleeves to be disclosed before the Court if his action is ever challenged in a court of law.*
> *(ii) At the time of the commencement of the reassessment proceedings, the Assessing Officer has to see whether*

there is prima facie material, on the basis of which, the department would be justified in reopening the case. The sufficiency or correctness of the material is not a thing to be considered at that stage.
(iii) The validity of the reopening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment.
(iv) The basic requirement of law for reopening and assessment is application of mind by the Assessing Officer, to the materials produced prior to the reopening of the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied - a postmortem exercise of analysing the materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.
(v) The crucial link between the information made available to the Assessing Officer and the formation of the belief should be present. The reasons must be self evident, they must speak for themselves.
(vi) The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. To put it in other words, something therein, which is critical to the formation of the belief must be referred to. Otherwise, the link would go missing.
(vii) The reopening of assessment under Section 147 is a potent power and should not be lightly exercised. It certainly cannot be invoked casually or mechanically.
(viii) If the original assessment is processed under Section 143(1) of the Act and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In other words, although the reopening may be after the expiry of four years from the end of the relevant assessment year, yet it would not be necessary for the Assessing Officer to show that there was any failure to disclose fully or truly all the material facts necessary for the assessment.
(ix) In order to assume jurisdiction under Section 147 where assessment has been made under sub-section (3) of section 143, two conditions are required to be satisfied;
(i) The Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment;
(ii) Such escapement occurred by reason of failure on the part of the assessee either
(a) to make a return of income under section 139 or in response to the notice issued under sub-section (1) of Section 142 or Section 148 or (b) to disclose fully and

truly all the material facts necessary for his assessment for that purpose.
(x) The Assessing Officer, being a quasi judicial authority, is expected to arrive at a subjective satisfaction independently on an objective criteria.
(xi) While the report of the Investigation Wing might constitute the material, on the basis of which, the Assessing Officer forms the reasons to believe, the process of arriving at such satisfaction should not be a mere repetition of the report of the investigation. The reasons to believe must demonstrate some link between the tangible material and the formation of the belief or the reason to believe that the income has escaped assessment.
(xii) Merely because certain materials which is otherwise tangible and enables the Assessing Officer to form a belief that the income chargeable to tax has escaped assessment, formed part of the original assessment record, per se would not bar the Assessing Officer from reopening the assessment on the basis of such material. The expression "tangible material" does not mean the material alien to the original record.
(xiii) The order, disposing of objections or any counter affidavit filed during the writ proceedings before the Court cannot be substituted for the "reasons to believe".
(xiv) The decision to reopen the assessment on the basis of the report of the Investigation Wing cannot always be condemned or dubbed as a fishing or roving inquiry. The expression "reason to believe" appearing in Section 147 suggests that if the Income Tax Officer acts as a reasonable and prudent man on the basis of the information secured by him that there is a case for reopening, then Section 147 can well be pressed into service and the assessments be reopened. As a consequence of such reopening, certain other facts may come to light. There is no ban or any legal embargo under Section 147 for the Assessing Officer to take into consideration such facts which come to light either by discovery or by a fuller probe into the matter and reassess the assessee in detail if circumstances require.
(xv) The test of jurisdiction under Section 143 of the Act is not the ultimate result of the inquiry but the test is whether the income tax officer entertained a "bona fide" belief upon the definite information presented before him. Power under this section cannot be exercised on mere rumours or suspicions. (xvi) The concept of "change of opinion" has been treated as a built in test to check abuse. If there is tangible material showing escapement of income, the same would be sufficient for reopening the assessment.

(xvii) It is not necessary that the Income Tax Officer should hold a quasi judicial inquiry before acting under Section 147. It is enough if he on the information received believes in good faith that the assesee's profits have escaped assessment or have been assessed at a low rate. However, nothing would preclude the Income Tax Officer from conducting any formal inquiry under Section 133(6) of the Act before proceeding for reassessment under Section 147 of the Act.
(xviii) The "full and true" disclosure of the material facts would not include that material, which is to be used for testing the veracity of the particulars mentioned in the return. All such facts would be expected to be elicited by the Assessing Officer during the course of the assessment. The disclosure required only reference to those material facts, which if not disclosed, would not allow the Assessing Officer to make the necessary inquiries. (xix) The word "information" in Section 147 means instruction or knowledge derived from the external source concerning the facts or particulars or as to the law relating to a matter bearing on the assessment. An information anonymous is information from unknown authorship but nonetheless in a given case, it may constitute information and not less an information though anonymous. This is now a recognized and accepted source for detection of large scale tax evasion. The non-disclosure of the source of the information, by itself, may not reduce the credibility of the information. There may be good and substantial reasons for such anonymous disclosure, but the real thing to be looked into is the nature of the information disclosed, whether it is a mere gossip, suspicion or rumour. If it is none of these, but a discovery of fresh facts or of new and important matters not present at the time of the assessment, which appears to be credible to an honest and rational mind leading to a scrutiny of facts indicating incorrect allowance of the expense, such disclosure would constitute information as contemplated in clause (b) of Section 147. (xx) The reasons recorded or the material available on record must have nexus to the subjective opinion formed by the Assessing Officer regarding the escapement of the income but then, while recording the reasons for the belief formed, the Assessing Officer is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the Assessing Officer had cause or justification to know or suppose that the income had escaped assessment. It is also well settled that the sufficiency and adequacy of the reasons which have led to the formation of a belief by the Assessing Officer that the

income has escaped the assessment cannot be examined by the court.
Now, we go through the provisions of Section 147 of the Act.
147. Income escaping assessment.--
If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)." 6.3 Considering the above, the Apex Court in the case of Kelvinator of India Ltd. (320 ITR 561) (SC) observed and held in para 4 as under :-
"4. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is

escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove.

Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147. A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

6.4 The reopening of assessment being based on a mere change of opinion, the assumption of jurisdiction on the part of the A.O. lacks validity and the notice u/s 148 of the Act cannot be sustained.

6.5 The Assessing Officer has power to reopen the assessment, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment and the reasons must have a live link with the formation of belief. In the present case, there is no tangible material. The issuance of the impugned notice u/s.148 is nothing but mere change of opinion. In absence of any new tangible material available with the A.O., it is not open to the A.O. to change his opinion by issuing the notice of re-assessment.

7. From the reasons recorded it can be said that the original assessment is sought to be reopened in exercise of powers under section 147/148 of the Act on change of opinion by the AO, which is not permissible more particularly when the original assessment is sought to be reopened after a period of four years from the end of the assessment year. In the present case, the original assessment for the assessment year 2009-10 was completed u/s. 143(3) of the I.T. Act on 25/11/2011 and notice for re-opening of assessment was issued to the assessee on 13/04/2015. As per the provisions of section 147 of the I.T. Act if in any assessment year and if after expiry of four years from the end of the relevant assessment year, action sought to be taken u/s. 147 of the I.T. Act, such action can be only in cases where income chargeable to tax has escaped assessment in such assessment year by reason of failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment in such assessment year. It is seen from the reasons recorded for re-opening of assessment that it does not show that there was escapement of income due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of income of the assessee for the assessment year 2009-10. Under the circumstances, the conditions stipulated under first proviso to section 147 are not satisfied and therefore, on the aforesaid ground alone, the impugned notice deserves to be quashed and set aside.

7.1 At this stage, it is appropriate to go through the reasons recorded by the Assessing Officer which read as under :

To,
The Navodaya Grama Vikas Charitable Trust, 14-7-1005, SCDCC Bank Ltd.
HO Bldg., Kodialbai!, Mangalore 575003
Sir,

Sub: Reopening of Assessment - U/s. 148 - AY 2009-10 - reg.
Kindly refer to the above.

As requested, the reasons as recorded prior to issue of Notice U/s 148 are as under:

> *"The assssse filed its Ream of Income on 29-09-2009 showing, total income as NIL after claiming application to the extent of Rs11,96,13,620/-. The scrutiny assessment U/s. 143(3] was completed on 25-11-2011 after accepting the returned income. The trust was granted registration u/s. 12AA of the Act on 10.01.2005*

w.e.f. 08-07-2004. Shri M.N. Rajendra Kumar is one of the trustees. During the course of assessment proceedings of the trust for AY 2012-13, it was observed that the trust has shown an amount of Rs.2,50,00,000 as land advance. It was also observed that in the case of Shri Pushparaj Jain, proprietor of Abish Builders and Developers, assessed by the undersigned as ACIT, Circle-1(1), the amount of Rs.2,50,00,000 received from the trust has been shown as a liability in the Balance Sheet while an identical amount had also been advanced to Shri M. N. Rajendra Kumar. The copy of Bank Statements of Shri Pushparaj Jain is available with the undersigned. The transactions from the account of Shri Pushparaj Jain are enlisted below :

S.No.	*Date of transaction*	*Name of party*	*Nature of transaction (Receipt / Payment)*	*Amount*
1.	*10.06.2008*	*Navodaya Grama Vikas Charitable Trust*	*Receipt*	*Rs.1,50,00,000*
2.	*10.06.2008*	*M.N. Rajendra Kumar*	*Payment*	*Rs.1,00,00,000*
3.	*10.11.2008*	*Navodaya Grama Vikas Charitable Trust*	*Receipt*	*Rs.50,00,000*
4.	*10.11.2008*	*M.N. Rajendra Kumar*	*Payment*	*Rs.50,00,000*
5.	*24.11.2008*	*Navodaya Grama Vikas Charitable Trust*	*Receipt*	*Rs.50,00,000*
6.	*24.11.2008*	*M.N. Rajendra Kumar*	*Payment*	*Rs.50,00,000*
7.	*02.01.2009*	*M.N. Rajendra Kumar*	*Payment*	*Rs.50,00,000*

From the above mentioned transactions, it is clear that Shri Pushpraj Jain is being used as an intermediary by the trust to channel funds to its trustee, Shri M.N. Rajendra Kumar. Therefore, the trust is hit by Section 13(1)(c) r.w.s. 13(2)(g) of the Income Tax Act and it cannot enjoy the benefit of exemption u/s. 11 & 12 for the relevant assessment year. Accordingly, the amount of Rs.2.5 Crores is required to be brought to tax for AY 2009-10.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment for AY 2009-10 within the meaning of Section 147. Accordingly, notice u/s. 148 of the Income Tax Act needs to be issued in this case for AY 2009-10"

Yours sincerely,
Sd/-
(JOSEPH RODRIGUES)
ASSISTANT COMMISSIONER OF INCOME-TAX

(EXEMPTIONS), CIRCLE-1, MANGALURU

> *8. Being so, in our opinion the reopening of assessment which is already concluded under Section 143(3) of the Act of the assessment cannot be reopened without any allegation by the Assessing Officer that there was non-disclosure of true and correct facts by the assessee while framing the original assessment.*
> *Hence,S we are inclined to annul the assessment. Since we have annulled the assessment, we are refrained to go into other grounds of appeal which are of only academic nature. The appeal of the assessee in ITA No.552/Bang/2018 is allowed."*

15. Respectfully following the above view, we are of the opinion that, the reasons recorded is not sufficient enough for formation of belief that income has escaped assessment and therefore hold that the reopening of assessment for the year under consideration in the present facts is bad in law. We accordingly, set aside and quash the assessment order passed by the Ld.AO dt. 23.03.2015 passed u/s. 143(3) r.w.s. 147 of the Act.

As we have already quashed the assessment order, the other grounds raised by assessee on merits need not be adjudicated.

Accordingly the ground no. 2 raised by assessee stands allowed. In the result appeal filed by assessee stands allowed on legal issue raised in ground no. 2.

Order pronounced in open court on 20th April, 2022.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 20th April, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore