

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6669/Mum./2016
(Assessment Year : 2007-08)

ITA No.6673/Mum./2016
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Circle-3(3)(1), Mumbai

...Appellant

v/s

Satya Securities Ltd.
1009, Maker Chamber-V
10th Floor, Nariman Point
Mumbai 400 021 PAN-AAECS9414M

.....Respondent

Assessee by : Shri A.K. Tibrewal a/w
Shri Saurabh Gupta
Revenue by : Shri P.R. Mane a/w
Smt. Kanupriya Damor

Date of Hearing- 10/08/2022

Date of Order- 04/11/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the Revenue challenging the separate impugned order of even date 25/08/2016 passed under section 250 of the Income Tax Act, 1961 (*the Act*) by learned Commissioner of Income Tax (Appeals)-8, Mumbai [*learned CIT(A)*], for the assessment years 2007-08 and 2008-09.

ITA No. 6669/Mum/2016
Assessee's Appeal - A.Y. 2007-08

2. In its appeal for the assessment year 2007-08, the Revenue has raised the following grounds:

"1. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.22,09,94,882/- made u/s.68 of the I.T.Act, 1961 on account of unsecured loans obtained.

2. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.1,86,052/- on account of disallowance of Salary and Travelling Expenses.

3. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. During the hearing, at the outset, the learned Authorised Representative (*learned AR*) wishes to press the petition dated 14/02/2022 filed under Rule 27 of ITAT Rules, 1963, whereby the assessee has raised jurisdictional ground challenging the validity of reassessment proceedings under section 147 of the Act. The aforesaid petition was taken on record and the present appeal was heard on same.

4. The brief facts of the case as emanating from the record are: The assessee is engaged in the business of trading in shares, goods and merchandise. For the year under consideration, the assessee filed its return of income on 23/10/2007 declaring a loss of Rs. 9,80,562. The return of income filed by the assessee was processed under section 143(1) of the Act and returned income was accepted. Thereafter, assessee's case was selected for

scrutiny and assessment under section 143(3) of the Act was completed on 25/08/2009 determining the total loss at Rs. 1,89,319.

5. Subsequently, vide notice dated 29/03/2012 issued under section 148 of the Act, reassessment proceedings were initiated in the case of the assessee based on information received from SP, CBI – Anti Corruption Bureau, Mumbai that the assessee is one of the group companies, who are engaged in providing accommodation entries to various persons, and its directors are operating 20 dummy concerns which have entered into bogus transactions with several concerns and provided accommodation entries. It was further alleged that the assessee is one of the beneficiaries which has received bogus accommodation entries. In response to the aforesaid notice, representation was made on behalf of the assessee, and details, as sought, were filed. The Assessing Officer (AO) vide order dated 30/03/2013 passed under section 143(3) r/w section 147 of the Act computed the total income of the assessee at Rs. 22,13,45,360 after making various disallowances.

6. In an appeal before the learned CIT(A), the assessee raised grounds challenging the invocation of jurisdiction under section 147 of the Act as well as various additions made by the AO. The learned CIT(A), after consideration of the remand report filed by the AO and the assessee's reply thereto, vide impugned order dated 25/08/2016 dismissed the appeal filed by the assessee on the issue of initiation of reassessment proceedings following its findings rendered in assessee's case for the assessment year 2005-06. The learned CIT(A), however, granted partial relief to the assessee on merits. Being

aggrieved, Revenue is in appeal before us challenging the relief so granted by the learned CIT(A) on merits. Further, the assessee by way of the petition under Rule 27 of ITAT Rules, 1963, while supporting the impugned order has raised ground pertaining to reassessment proceedings, which was dismissed by the learned CIT(A).

7. During the hearing, learned AR, inter-alia, submitted that the reasons recorded by the AO for reopening the assessment are vague and do not specify the party from whom the bogus accommodation entry is alleged to be received by the assessee. Learned AR further submitted that the CBI report can be called tangible material but it must have a direct link with the formation of the belief that income has escaped assessment. Further, reasons recorded by the AO are reasons to suspect and it shows that AO wanted to conduct further examination/verification.

8. On the other hand, during the hearing, the learned Departmental Representative (*learned DR*) submitted that reassessment proceedings were initiated based on information received from CBI and thus were initiated based on credible information. Learned DR further submitted that as per the information received it was *prime facie* established that unsecured loans appearing in the books of the assessee company are not genuine loans.

9. We have considered the rival submissions and perused the material available on record. The learned DR, vide its written submission dated 24/08/2022, has objected to the admission of the petition filed by the

assessee under Rule 27 of ITAT Rules, 1963. As per the learned DR, since the assessee did not file any cross-appeal or cross-objection against the impugned order passed by the learned CIT(A), therefore, the assessee cannot invoke Rule 27 of the ITAT Rules, 1963 to question the validity of the proceedings under section 147 of the Act. It is the submission of learned DR that permitting the admission of the petition under Rule 27 would leave the Revenue worse off in its appeal. The learned DR also submitted that Rule 27 cannot be invoked to expand the scope of the appeal and assail the decision on issues, which are beyond the subject matter of the appeal. In support of the submissions, reliance has been placed upon CIT v. Divine Infra (P.) Ltd. [2015] 64 taxmann.com 472 (Delhi) and CIT v. Edward Keventor (Successors) (P.) Ltd . [1980] 123 ITR 200 (Delhi).

10. Before proceeding further, it is relevant to note the provisions of Rule 27 of ITAT Rules, 1963, which reads as under:

"Respondent may support order on grounds decided against him.

27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."

11. The interpretation of Rule 27 of ITAT Rules, 1963 has been the subject matter in several decisions of various Hon'ble High Courts. We find that in Sanjay Sawhney vs PCIT, [2020] 273 Taxman 332 (Delhi), Hon'ble Delhi High Court dealt with the facts wherein the first appellate authority had decided jurisdictional challenge to proceedings initiated under section 153C of the Act against the assessee, while on merits appeal was decided in favour of

assessee. In appeal by the Revenue against the findings on merits, the assessee made the prayer under Rule 27 of ITAT Rules, 1963 before the Tribunal and challenged the findings on the jurisdictional issue. The Hon'ble Delhi High Court vide its detailed judgment analysed the provisions of Rule 27 of ITAT Rules, 1963. The Hon'ble High Court also dealt with the decisions which have now been relied upon by the learned DR as well as similar submissions made before us. The relevant observations of the Hon'ble Delhi High Court in the aforesaid decision are as under:

"14. It emerges that Rule 27 ought not to be applied narrowly and therefore we cannot agree with Mr. Hossain, that by permitting the Appellant- Assessee (respondent before the Tribunal) to invoke Rule 27 before the Tribunal, to challenge the ground decided against him, scope of the subject matter of appeal would get expanded. We must also bear in mind that jurisdictional issue sought to be urged by the appellant under Rule 27 is interlinked with the other grounds of appeal, and its adjudication would have a direct impact on the outcome of the appeal The validity of the proceedings goes into the root of the matter and for this reason, the assessee should not be precluded from raising a challenge to that part of the order which was decided against him by the CIT(A)....."

The Hon'ble Delhi High Court further observed as under:

"20. Having analyzed the judgments relied upon by the Revenue and not finding same to be of any assistance Ja the Revenue, we now proceed to examine the legal position that emerges from a plain reading of the provision in question. In fact, we feel the controversy sought to be raked up by the Revenue to deprive the Appellant | Respondent before ITAT] an option to raise jurisdictional grounds of objection is completely misplaced. If we refer to Rule 27 of ITAT Rules, 1963, a bare reading thereof manifest that a Respondent has a right to support the impugned order, without having filed any cross appeal or cross objection. This understanding emerges from the language of the said provision which begins with the words "The Respondent, though he may not have appealed." This means that the provision is to enable a Respondent to effectively defend the order appealed before the Appellate forum. The expression "though he may not have appealed" also indicates that the provision is to be resorted to in a situation where a Respondent may otherwise have a right to file an appeal or cross objections, but has chosen not to avail of this remedy. Thus, a party who has not availed of the option of filing an appeal, in a given situation, if arrayed as a Respondent before the Appellate Tribunal, can

rely upon Rule 27, to support the order under appeal. The aforesaid - expression also suggests that recourse to Rule 27 would only be available in case the remedy of appeal is otherwise available with the Respondent, and he has elected not to avail the same. In other words, in case a Respondent would not have such a right (of filing a cross appeal or cross objection), then he would not have the option to invoke the said provision. This brings us to the more fundamental question regarding the scope of aforesaid rule at the instance of the Respondent who is invoking the same. The scope and ambit of the aforesaid provision can be gathered from the remaining part of the said rule to the effect "may support the order appealed against on any of the grounds decided against him". A plain reading of the aforesaid expression indicates that a Respondent can support an impugned order on any of the grounds which were decided against him. Now, if we apply the aforesaid provision to the situation before us, we can easily discern that the Appellant-assessee- on the basis of Rule 27, was urging before the ITAT that the initiation of reassessment may be declared as invalid. Therefore, by invoking Rule 27, the assessee sought to support the final order of the CIT(A) in his favour, by assailing that part of the said order, wherein the CIT(A) upheld the initiation of reassessment under section 153C of the Act. We are, therefore, of the view that invocation of Rule 27 for challenging the decision of the CIT (A) on the legal ground was well within the scope of Rule 27. The Appellant - assessee, as a respondent before the Tribunal was within its right to support the order under appeal before the Tribunal by attacking the grounds decided against him. It should nevertheless be borne in mind that Rule 27 cannot be invoked by a Respondent on an issue which is independently decided against him in the order appealed by the Appellant. In other words, if there is an issue, which is separately decided against a Respondent (in appeal), and the decision on the said issue has no bearing on the final decision of the CIT(A), then invocation of Rule 27 to challenge the correctness of the same cannot be sustained. Rule 27 and the provisions dealing with cross objections operate in separate fields, although there is certain overlap between them. Evidently, if cross objection is not filed, the Respondent would run the risk of being faced with a situation that it cannot succeed in getting anything over and above the order in appeal being confirmed. If the Respondent wants to assail an independent issue that has been decided against him in the order appealed by the Appellant, which has no bearing on the result of order impugned in appeal before the Tribunal, the appropriate remedy would lie in of filing a cross appeal or cross objection. In that event, as explained above, Rule 27 cannot be pressed into service to have the same upset or overturned.

21. Therefore, arguably Rule 27 has à limited sphere of operation, but this cannot be whittled or narrowed down to the extent, the Revenue would like us to hold. We cannot read Rule 27 in a restrictive manner to hold that the said provision can only be invoked to support the order in appeal and while doing so, the subject matter of the appeal before the ITAT should be confined only to the extent of the grounds urged by the Appellant. To read Rule 27 in this manner would render the said rule redundant as the respondent before the Tribunal would, even otherwise be entitled to oppose the appeal and raise submissions in answer to the grounds raised in the appeal that are pressed at the hearing of the appeal. With this clarity, we do not find any merit in the submissions of the Revenue that the assessee had accepted order of CIT (A), or

that the issue of maintainability had attained finality. We also do not find that by such an interpretation, the scope of Rule 27. is expanded or that it would be contrary to section 253 (4), or that it would render the provision relating to cross objections redundant and otiose. In Sundaram & Co (supra), the High Court observed that the reason for such a rule [Rule 27] was that when a decision is favorable to a person and comes to be challenged by his adversary, the person must be in a position to support the decision on every ground urged before the deciding authority whether or not it found favor, else such a person would be a victim of wrong reasons if no such freedom was given. In fact, the court has further held that even if Rule 27 as under the 1946 Rules had not been enacted, scope for invocation of the principle underlying the rule would still be possible based on principles of natural justice. This is the essence of the proceedings in appeal before the ITAT which unfortunately has been completely ignored and, instead, the Tribunal has engaged itself in a totally irrelevant issue of the form and structure of the application.

22. *Therefore, the position of law that materialises on a reading of the aforesaid decisions is that the appellant herein, (Respondent before ITAT) could have invoked Rule 27 to assail those grounds that were decided against him if those grounds/issues had a bearing on the final decision of the CIT(A). Revenue was certainly not taken by surprise as the appeal is considered to be continuation of the original proceedings. The ITAT had no discretion to deprive the appellant the benefit of the enabling Rule provision to defend the order of the CIT(A). The question of jurisdiction-which is sought to be urged by the Respondent while supporting the order in appeal had a bearing on the final order passed by the CIT(A), because if the said issues were to be decided in favour of the appellant herein the assessee, that would have been an additional reason to delete the additions made by the A.O.*

- 23.
- 24.
- 25.

26. *The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT(A) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT. the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent- assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT,*

therefore, committed a mistake by not permitting the assessee to support the final order of CIT(A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant-assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant-assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under section 153C of the Act."

12. We further find that Hon'ble Jurisdictional High Court in CIT vs Hazarimal Nagji & Co., [1962] 46 ITR 1168 (Bom), observed as under:

"A respondent, unless he has filed an appeal himself or filed cross-objections in the appeal filed by his opponent, will not be entitled to challenge that part of the lower court's decree which is against him, and the appellate court will have no power or jurisdiction to permit him to do so. But, in so far as he only wants to maintain the decree of the lower court which is against the appellant and in his favour, he will be entitled to support it on fresh grounds also if he can do so, and the appellate court also will have jurisdiction to permit him to do so, provided, of course, that the fresh grounds which he wants to urge do not require a further investigation into facts which are not already on record and are not based on facts which were neither alleged nor admitted nor proved and which the other side was never called upon to meet in the lower court. But, if all the facts necessary to sustain a fresh ground which he wants to urge are undisputed facts which are already on record and the contention which he wants to raise is a pure question of law, we do not see why there should be any difficulty in his way in raising the same, or any difficulty in the way of the appellate court to allow him to do so."

13. As is evident from the record, in the present case, the assessee challenged the validity of reassessment proceedings under section 147 of the Act before the learned CIT(A) and vide impugned order (at page 41) said grounds raised by the assessee were dismissed. Thus, it is not a case wherein the jurisdictional issue has been raised for the first time before us vide petition

filed under Rule 27 of ITAT Rules, 1963. Therefore, in view of the aforesaid judicial pronouncements, we find no merits in the submissions of learned DR objecting to the admission of the petition under Rule 27 of ITAT Rules, 1963. Accordingly, the petition filed by the assessee under Rule 27 of ITAT Rules, 1963 is admitted for adjudication.

14. In the present case, the return of income filed by the assessee was selected for scrutiny, and order under section 143(3) of the Act was passed on 25/08/2009 determining the total loss at Rs. 1,89,319. However, before the expiry of 4 years from the end of the relevant assessment year, notice under section 148 of the Act was issued to the assessee on 29/03/2012. While initiating the reassessment proceedings, the Assessing Officer recorded the following reasons for reopening the assessment:

".....

The ROI for A.Y.2007-08 was filed on 23-10-2007. In this case, an order u/s. 143(3) of the Act 1961 was passed on 25-08-2009 assessing its total loss at Rs. 1,89,319/-.

The ADIT(In.), Unit VII-I & II, Mumbai vide letter dated 28.12.2011 has intimated that the assessee company, is one of the group Companies formed by Shri Arun & Harsh Dalmia and is engaged in providing accommodation entries to various persons. The report of the ADICT (Inv.) is based on the report of ACB, CBI, Mumbai where in it is reported that the CBI, ACB, Mumbai has conducted investigation in the affairs of Shri Harsh Dalmia and Shri Arun Lal Saini, who are directors of M/s. Satya Securities P. Ltd. It is reported that they operate 20 dummy concerns which have entered into bogus transactions with several concerns and provided accommodation entries. The relevant part of the scrutiny report along with the covering letter of S.P., CBI and ACB, Mumbai is as under:

SP's Report:

Shri Dalmia's floated 20 companies has never paid taxes to the Government since all his concerns were shown to run in losses in almost all the years. The above said act on the part of Shri Arun Dalmia and Shri Harsh Dalmia constitute evasion of income tax.

CBI and ACB, Mumbai's Report

The CBI has reported that searches at the residence and office premises of Shri M. S. Bali and Dalmia's CBI Prima facie could find substantial material which indicates that 20 firms of Shri Arun Dalmia are engaged in money laundering and income tax evasion. Scrutiny of documents revealed that Shri Arun Kumar Dalmia and his younger son Shri Harsh Dalmia are directors of M/s. Watermark Financial Consultants Ltd., having office at 1010, Maker Chamber No. V, Nariman Point, Mumbai 400 021. They are running the above mentioned companies from the same address and at most of the companies, their employees are directors. They are falsely submitting the business of purchase and sales of software in most of the companies though none of the companies are having any infrastructure or manpower of the same.

(Insider Trading with listed company in a stock market)

Shri Arun Dalmia and Shri Harsh Dalmia through their concern namely M/s. Basant Marketing P. Ltd. and M/s. Satya Securities Ltd. has acquired holding of 5.55% in Granules India Ltd. Without following norms of Securities and Exchange Board of India Act, 1992. They in connivance with promoter and brokers namely Mr. Mahendra Kumar Khirodwala and Mr. C. Krishna Prasad MD of M/s. GIL acquired huge quantity of shares in the name himself and his family members. SEBI has levied penalty of Rs. 10 lakh on 27.03.2009.

The assessee company is one of the beneficiaries which have received bogus accommodation entries. Investigation carried out by the CBI-ACB has established prima facie that unsecured loans appearing in the books of the assessee company are not genuine loans, but were only bogus entries whose source is not genuine.

Therefore, I have reason to believe that the income chargeable to tax has escaped assessment. Notice u/s. 148 of the I. T. Act, 1961 issued, after obtaining approval of the CIT-3, Mumbai."

15. Thus, reassessment proceedings were initiated in the case of the assessee based on information received from SP, CBI–Anti Corruption Bureau, Mumbai that the assessee is one of the group companies, that are engaged in providing accommodation entries to various concerns, and its directors are operating 20 dummy concerns that have entered into bogus transactions with several concerns and provided accommodation entries. It was also alleged that the assessee is a beneficiary of bogus accommodation entries and the investigation carried out by the CBI prima facie established that unsecured

loans appearing in the books of the assessee company are not genuine loans but were only bogus entries whose source is not genuine.

16. It is trite that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis to determine the validity of proceedings under section 147 of the Act. In this regard, it is relevant to note the following observation of Hon'ble Jurisdictional High Court in Hindustan Lever Ltd vs R.B.Wadkar: [2004] 268 ITR 332 (Bom.):

*"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. **It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons.** It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. **It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence.** The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*
(emphasis supplied)

17. From the reasons recorded by the AO, in the present case, it is evident that reference has been made to the report of ADIT (Investigation), which is

based on the investigation carried out by the CBI. In the aforesaid reasons, on one hand, the assessee is alleged to be one of the group companies formed by Shri Arun and Harsh Dalmia and is engaged in providing accommodation entries to various concerns. While on the other hand, the assessee was alleged to be the beneficiary, which has received bogus accommodation entries. In the entire reasons, as recorded by the AO, there is no mention of the entity from which the assessee is alleged to have received the bogus accommodation entry. There is also no allegation that the 20 dummy concerns which are alleged to be operated by directors of the assessee have provided the aforesaid bogus accommodation entry to the assessee. Further, though the investigation carried out by the CBI is alleged to be the basis for initiating the reassessment proceedings under section 147 of the Act, however, there is no mention as to which information can prima facie lead to the conclusion that income chargeable to tax has escaped assessment in the case of the assessee. There is also no mention of any alleged transaction resulting in bogus accommodation entry in favour of the assessee.

18. For initiating the proceeding under section 147 of the Act, the AO is required to have '*reason to believe*' that income chargeable to tax has escaped assessment. The existence of a valid '*reason to believe*' is a *sine qua non* to exercise the jurisdiction under Section 147 of the Act. The expression '*reason to believe*' imports the cumulative presence of the following four elements viz. some tangible material or materials to establish that income has escaped assessment; nexus between such material and the belief of escapement of

income from assessment as envisaged under section 147; application of mind by the AO to such material; and an inference, based on reason, drawn tentatively by the officer that income has escaped assessment. However, in the present case, the nexus between the alleged material, i.e. the investigation report of the CBI, and the belief of escapement of income from assessment under section 147 of the Act is missing and thus renders the reasons to be reasons to suspect for making further investigation.

19. At this stage, it is relevant to note the following observation of Hon'ble Jurisdictional High Court in PCIT vs Shodiman Investments (P.) Ltd., [2020] 422 ITR 337 (Bom.):

"13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment."

20. As noted above, it is the duty of the AO to record the reasons clearly and unambiguously and no inference can be drawn therefrom. Therefore, in view of the aforesaid findings and respectfully following the aforesaid judicial pronouncements, we are of the considered view that in the present case reasons recorded by the AO are not only vague but also lack the vital link between the alleged material and the belief that income of the assessee has escaped assessment.

21. Accordingly, the impugned order passed by the learned CIT(A) upholding reassessment proceedings, which resulted in the passing of order under section 143(3) r/w section 147 of the Act is set aside. As a result, the petition dated 14/02/2022 filed by the assessee under Rule 27 of ITAT Rules, 1963 is allowed.

22. In view of the above, the grounds raised by the Revenue on merits are rendered academic and therefore, are dismissed.

23. In the result, the appeal by the Revenue is dismissed, while the petition under Rule 27 of ITAT Rules, 1963, as filed by the assessee, is allowed.

ITA No. 6673/Mum/2016
Assessee's Appeal - A.Y. 2008-09

24. In its appeal for the assessment year 2008-09, the Revenue has raised the following grounds:

"1. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.15,84,40,000/- made u/s.68 of the I.T.Act, 1961 on account of unsecured loans obtained.

2. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.2,14,068/- on account of disallowance of Salary and Travelling Expenses.

3. Whether on the facts and circumstances and in law, the Ld.CIT(A) while deleting the disallowance made u/s.14A r.w.r. 8D has erred in not appreciating the fact that the amount of disallowance u/s.14A of the I.T.Act, 1961 has to be computed as per Rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.

4. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

5. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

25. In this appeal also, at the outset, the learned AR wishes to press the petition dated 14/02/2022 filed under Rule 27 of ITAT Rules, 1963, whereby the assessee has raised jurisdictional ground challenging the validity of reassessment proceedings under section 147 of the Act. The aforesaid petition was taken on record and the present appeal was heard on same.

26. In this appeal, the learned representative for the parties made similar submissions as were made in the appeal for the assessment year 2007-08 in respect of the challenge against reassessment proceedings under section 147 of the Act. From the perusal of the record, we find that in the assessment year 2008-09 the AO has recorded similar reasons for reopening the assessment as were recorded in the assessment year 2007-08. Thus, our findings/conclusions as rendered in the appeal for the assessment year 2007-08 shall apply *mutatis mutandis* to this appeal as well.

27. Accordingly, the appeal by the Revenue is dismissed, while the petition under Rule 27 of ITAT Rules, 1963, as filed by the assessee for the assessment year 2008-09, is allowed.

Order pronounced in the open Court on 04/11/2022

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/11/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai