IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.7543/Mum/2013
(**Assessment Year :2002-03**)

M/s. Tata Motors Limited (Successor to Tata Finance Limited) Bombay House 24, Homi Mody Street Mumbai – 400 001	Vs.	Assistant Commissioner of IncomeTax (LTU), Mumbai 29th Floor, Centre-1 World Trade Centre Cuffe Parade Mumbai
PAN/GIR No.AAACT2727Q		
(Appellant)	..	**(Respondent**)

ITA No.7359/Mum/2013
(**Assessment Year :2002-03**)

Dy. Commissioner of Income Tax-3(4), Mumbai 29th Floor, Centre-1 World Trade Centre Cuffe Parade Mumbai-400 005	Vs.	M/s. Tata Motors Limited (Successor to Tata Finance Limited) Bombay House 24, Homi Mody Street Mumbai – 400 001
PAN/GIR No.AAACT2727Q		
(Appellant)	..	**(Respondent**)

Assessee by	Ms. Aarti Vissanji
Revenue by	Shri A.B.Koli
Date of Hearing	**27/09/2022**
Date of Pronouncement	**30/11/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These cross appeals in ITA No.7543/Mum/2013 & 7359/Mum/2013 for A.Y.2002-03 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No.CIT(A)-6/IT.53/Rg.2(3)/09-10 dated 30/09/2013 (ld. CIT(A) in short) against the order of assessment passed u/s.147 r.w.s. 143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 13/03/2006 by the ld. Asst. Commissioner of Income Tax (OSD)-2(1), Mumbai (hereinafter referred to as ld. AO).

As these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.

2. We find that assessee had challenged the validity of re-assessment u/s.147 of the Act in the instant case. We deem it fit to address this legal issue first as it goes to the root of the matter.

3. We have heard rival submissions and perused the materials available on record. The assessee company is engaged in the business of hire purchase, leasing, bill discounting and generation of power. It is also engaged in the number of finance related activities. The return of income for the A.Y.2002-03 was filed on 30/10/2002 declaring total loss of Rs.14,72,82,350/-. This return of income was processed u/s.143(1) of the Act as on 13/01/2003. The assessment was not selected for scrutiny. Thereafter, this assessment was sought to be reopened by issue of notice u/s.148 of the Act on 20/01/2005 after recording the reasons for

reopening the assessment. For the sake of convenience the reasons recorded by the ld. AO as furnished to the assessee are as under:-

"2. As requested by your above referred letter, following are the reasons for re-opening the assessment for A.Y. 2002-03-

"The assessee company is engaged in the business of Hire Purchase, Leasing, Bill Discounting and Generation of Power. It is also engaged in the number of finance related activities. The return of income for AY.2002-03 declaring total loss of Rs.14,72,82,350/- was filed on 30.10.2002. The return of income was processed u/s 143(1) of the Act on 13.01.2003 resulting in the refund of Rs.15,93,18,614/-

However, it is revealed while going through the case records for A.Y.02-03 of the assessee company the following issues are skewed against the I.T.Department:

1. Interest income of Non Performing Assets/Doubtful assets have been recognized on the receipt of the interest rather than Mercantile System of Accounting followed by the assessee company.

2. Late payment of compensation in case of Lease, Hire Purchase Contract for commercial vehicle & bill discounting has been accounted for on receipts basis though the assessee company followed Mercantile System of Accounting.

3. Subvention income received from the dealers is pro-rated over the tenure of facility w.e.f. 1 July 2001 resulting in the higher claim of loss to the tune of Rs.2.57 crores.

4. The assessee company has not complied with the prudential norms prescribed in the Non-Banking Financial Companies' Prudential Norms (Reserve Bank) Directions, 1998.

5. Cumulative provisions of Rs.291.20 crores has been made by the assessee company vis-à-vis Loans and Advances granted to Niskalp Investment & Trading Co. Ltd.

6. The assessee company has not recognized interest receivable from Niskalp Investments & Trading Co. Ltd. on outstanding ICDs of Rs.4842.44 lacs.

7. Loss arising from transfer and cancellation of contract claimed as miscellaneous expenditure to the tune of Rs.152 lacs, which is prima-facie capital in nature.

8. Excess Managerial Remuneration is claimed at Rs.13.12 lacs.

9. Sale of power to MSEB has been shown at provisional rate rather than the final rate.

10. Other companies have been nominated for the sales tax incentives vis-à-vis sales tax incentives arising out from wind power generation.

11. Interest accrual to the tune of Rs.4.7 crores does not find a place in the Profit and Loss Account

12. Provision for Non Performing Assets of Rs.19.3 crores have been made, this nature of provision being contingent in nature be debited to Profit and Loss Account.

13. Investment has been made in the shares to the tune of Rs.214.8 crores, however the assessee has not comply with the provisions of section 14A of the 1.T.Act, 1961.

14. Provision for doubtful Inter-Corporate Deposits of Rs.346.7 crores debited to Profit & Loss Account. Similarly, provision for Doubtful Advances of Rs. 10,00,000/- has been wrongly claimed.

15. Income received in advance to the tune of Rs.16 crores have not been shown in the Profit and Loss Account.

16. Provision for Leave Encashment of Rs.1.15 crores have been wrongly claimed by the assessee company.

17. In the head of "Miscellaneous expenses", Share Issue expenses shown at Rs.42.35 lacw, which is basically capital in nature has been claimed by the assessee company. 18. Lease equalization adjustment of Rs.9.27 has been wrongly claimed by the assessee company. 19. Transactions for the period from 01.04.2001 to 30.06.2001 have not been audited by the Tax Auditors certifying the Tax Audit Report.

20. There has been buy-back of shares to the tune of Rs.398.51 lacs of Niskalp Investment & Trading Company Ltd., however, its impact on the financial statements has not been ascertained.

21. Though assessee company followed Mercantile System of Accoutning, the assessee company followed Cash System of Accounting" in respect of Compensation for late payment received in respect of lease, hire purchase and bills discounting business and Income from Non Performing Assets.

22. Assessee company has changed its method of accounting, resulting in higher claim of loss of Rs.2.57 crores.

23. Loss on cancellation of capital contract claimed, is basically capital in nature.

3.1. The assessee vide letter dated 19/09/2005 filed its objections to assumption of jurisdiction u/s.148 of the Act and also for the reasons recorded thereon, before the ld. AO. This letter is enclosed in pages 46-53 of the paper book. The ld. AO vide letter dated 20/12/2005 disposed of the objections filed by the assessee by separate letter justifying the reopening. Thereafter, the assessee started furnishing the details that were called for by the ld. AO from time to time, on various issues on merits. The re-assessment was completed u/s.143(3) r.w.s. 147 of the Act dated 13/03/2006 determining total income of Rs.9,69,61,530/-, after making various disallowances. The assessee challenged the validity of re-assessment before the ld. CIT(A) also by submitting that the ld. AO did not have any tangible material with him which would enable him to form a belief that income of the assessee had escaped assessment. This is evident from the fact that the reasons recorded as communicated to the assessee clearly reveals that the ld. AO had merely verified the very same record that are already available with him. It was submitted that the reasons recorded only enable the ld. AO to make fishing and roving enquiries which is not permissible u/s.147 of the Act. The ld. CIT(A) dismissed the plea of the assessee and confirmed the reopening of assessment made u/s.147 of the Act. However, in respect of various disallowances made on merits, the ld. CIT(A) granted partial relief to the assessee. Aggrieved by the order of the ld. CIT(A), both the assessee as well as the Revenue are in appeal before us.

3.2. We find from the perusal of the reasons as communicated to the assessee which are reproduced hereinabove, the following points clearly emerge:-

a) The reasons as communicated to the assessee merely state the list of items that are skewed against the Income Tax department. The ld. AO does not even mention that because of these issues, the income of the assessee had escaped assessment.
b) The reasons as communicated to the assessee which are reproduced hereinabove does not even say that the ld. AO had a reason to believe that income of the assessee had escaped assessment.
c) The reasons only contemplate the ld. AO to make fishing an roving enquiry.

3.3. Admittedly, when this was put to the ld. DR, the ld. DR sought time and furnished the full extract of the reasons recorded for reopening the assessment before this Bench. The full extract of the reasons recorded by the ld. AO as furnished by the ld. DR before us contain the last para wherein the ld. AO had recorded that he had reason to believe that income of the assessee had escaped assessment warranting reopening u/s.147 of the Act.

3.4. From the above, it could be safely concluded that the full extract of the reasons recorded for reopening their assessment was not furnished by the ld. AO to the assessee upto the stage of completion of first appellate proceedings and that the same was furnished for the first time only before the second appellate proceedings before us. Now, the legal issue arises as to whether the reopening of assessment would be justified

when partial extract of the reasons were furnished to the assessee and that whether partial furnishing of the reasons would be equivalent to non-furnishing of the reasons to the assessee. We find that this issue has been addressed by the Co-ordinate Bench decision of this Tribunal in the case of ACIT vs. Bharti Axa Life Insurance Co. Ltd reported in 189 ITD 450. The relevant operative portion of the said order is reproduced hereunder:-

> ***"4.7** The ld DR at the time of hearing before us vide letter dated 6-1-2021 furnished the copy of complete reasons recorded for reopening the assessment together with the prescribed proforma in which approval in terms of section 151 of the Act was obtained from the superior officers. The full text of the reasons recorded for reopening the assessment and the statutory proforma for obtaining approval in terms of section 151 of the Act are reproduced hereunder for the sake of convenience :—*

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEE
SECTION 148 AND FOR OBTAINING THE APPROVAL –
COMMISSIONER OF INCOME-TAX – 9, MUMBAI

1	Name and address of the assessee	:	M/s.Bharti Axa Life Insurance Co.Ltd
2	Permanent Account No.	:	AACCB7227P
3	Status	:	Company
4	District / Circle/Range	:	DCIT-9(1), Mumbai
5	Assessment Year in respect of which it is proposed to issue notice u/s. 148	:	2007-08
6	The quantum of income which has escaped assessment	:	Not quantifiable
7	Whether the provisions of Sec.147(a) or 147(b) are applicable or both the sections are applicable	:	U/s. 147(b) of the I. T. Act, 1961.
8	Whether the assessment is proposed to be made for first time. If the reply is in the affirmative please state	:	No
	(a)Whether any voluntary return had already been filed and	:	No
	(b) If so, the date of filing the said return	:	N.A.
9	If the answer to item 8 is in the negative, please state	:	N.A.
	(a) The income originally assessed	:	(-) Rs.73,28,08,306
	(b) Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief for allowing of excessive loss or depreciation	:	No
10	Whether the provisions of Sec.150(1) are applicable, if the reply is in the affirmative, the relevant facts may be stated against item No.11 and it may also be brought out that the provisions of Sec.150(2) would not stand in the way of initiating proceedings u/s. 147.	:	Yes
11	Reasons for the belief that income has escaped assessment	:	As per annexure

Dated : 27.03.2014.

(S.H.KABRA)
Dy. Commissioner of Income-tax 9(1),
Mumbai.

12	Whether the Addl.Commissioner is satisfied on the reasons recorded by the DCIT that is a fit case for the issue of a notice u/s. 148	:	Yes I am satisfied
13	Whether the Commissioner is satisfied on the reasons recorded by the DCIT that is a fit case for the issue of a notice u/s. 148	:	Yes, I am satisfied.

ABHIJIT PATANKAR
Addl.Commissioner of Income-tax Range,9(1),
Mumbai.

> *1. The assessee M/s Bharti AXA Life Insurance Co,. Ltd having PAN AACCB7227P is assessed to tax in this charge. In this case return of income*

was e-filed on 31-10-2007 declaring total loss at Rs. 80,42,56,839/-. The assessment u/s 143(3)/144C (3) was passed on 30.12,2010 at loss of Rs. 73,28,08,306/-.

2. On verification of records it is noticed that the assessee has declared loss of Rs. 80,42,56,839 in the return of income and carried it forward to set it off against profits for subsequent years. The assessee, being a life insurance company has claimed that its income has been computed as per section 44 read with First schedule to the I.T. Act, 1961. In the assessment order, the profits and gains from insurance business as declared by the assessee have been accepted subject to an addition of Rs. 7,14,48,533/- made in accordance with the order of the TPO.

3. In this connection, it is necessary to reproduce provisions of sections 44 and Rule 2 of the First Schedule as follows:

Not withstanding anything to the contrary contained in the provisions of this Act . . . shall be computed in accordance with the rules contained in the First Schedule.

Thus, the profits and gains of the insurance have to be determined in accordance with the surplus disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 in respect of the last inter-valuation period ending before the commencement of the assessment year.

The assessee has in fact, not followed the above cited provision, it has simply picked up the figure of loss from its profit and loss account for the year ended March 31, 2007 which is also termed as the shareholders' Account (Nontechnical account). The loss has been arrived at as....,it can be seen that the loss has arisen only on account of transfer of funds from the shareholders account to the policyholders account has been shown by the assessee as its loss from the insurance business, which is against the provisions of section 44 read with Rule 2 of first schedule.

In view of the above, treatment of a mere transfer of funds from the shareholders' account as loss eligible to be carried forward was not correct. As the amount of surplus as per actuarial valuation is not available on record, the exact underassessment of income and tax effect cannot be determined. However same will be not less than Rs. One lakh.

4. Therefore, I have reason to believe that assessee's income is escaped amount within the meaning of section 147 of the IT Act 961 by the reason of omission of the part of the assessee by way of disclosing the income as per aforesaid provisions of the I.T. Act 1961. Therefore I am satisfied that this case is fit case to issue notice u/s148 r.w.s.147 of the I.T. Act, 1961.

5. The relevant assessment year being A.Y. 2007-08, the period of re-opening is within 6 years. Hence, approval & satisfaction of the Commissioner of Income-tax is sought for re-opening the case as per provisions of section 151(1) of the IT. Act.

4.9. *From the perusal of the reasons recorded for reopening the assessment, as furnished to the assessee, it is a fact that the said reasons communicated to the assessee were incomplete and no where in the reasons recorded, the failure on the part of the assessee to furnish full and true information necessary for the purpose of assessment was mentioned.* ***When this was put to ld DR, he argued that the full text of the reasons recorded would be available in the assessment folder and that whatever is relevant to be given to the assessee had been duly furnished by the ld AO. We find that the ld DR had duly furnished the full text of the reasons recorded for reopening the assessment which was also duly placed before the competent authority while seeking approval in terms of section 151 of the Act. In the said full text of reasons, omission on the part of the assessee was mentioned as a general and vague statement without specifically pointing out as to what was the clear omission or failure on the part of the assessee in not furnishing the requisite information that was necessary for the assessment. Infact the reasons recorded starts with "On verification of records …… ". This statement itself very clearly proves that the entire information was very much available with the ld AO in the records which alone enabled him on bare perusal, to come to a conclusion that income of the assessee had escaped assessment****. Hence in this scenario, how failure or omission could be attributed on the part of the assessee. Once there is no failure on the part of the assessee in providing requisite information, then the basic premise on which the entire reassessment was framed by recording reasons, vanishes in thin air. This makes the entire reassessment proceedings void ab initio.* ***Moreover, we also find that the ld AO had triggered the reopening only based on verification of records. This goes to prove beyond doubt that there was absolutely no tangible material available with the ld AO to form a belief that income of the assessee had escaped assessment. On this count also, the reopening of the assessment deserves to be declared as bad in law.***

4.9.1 ***We find that the assessee upto the completion of reassessment and first appellate proceedings thereon was supplied only with the extract of reasons recorded which was admittedly incomplete as narrated above****. Even the said extract of reasons recorded were supplied to the assessee without furnishing the sanction obtained in terms of section 151 of the Act, though it was specifically sought for in writing by the assessee. In this regard, we find that the ld AR rightly placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Shodiman Investments (P.) Ltd (supra), wherein it was held as under:—*

> *9. We find that at the time of re-opening of the Assessment, the Assessing Officer did not provide the reasons recorded in support of the re-opening notice in its entirety, to the Respondent-Assessee. This was contrary to and in defiance of the decision of the Apex Court in GKN Driveshafts v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19. The entire objects of reasons for re-opening notice as recorded being made available to an Assessee, is to enable the Assessing Officer to have a second look at his reasons recorded before he proceeds to assess the income, which according to him, has escaped Assessment. In fact, non furnishing of reasons would make an Assessment Order bad as held by this Court in CIT v. Videsh Sanchar Nigam Ltd. [2012] 21 taxmann.com 53/340 ITR 66. In fact, partial furnishing of reasons will also*

necessarily meet the same fate i.e. render the Assessment Order on re-opening notice bad. Therefore, on the above ground itself, the question as proposed does not give rise to any substantial question of law as it is covered by the decision of this Court in Videsh Sanchar Nigam Ltd.'s. case (supra) against the Revenue in the present facts.

10. Besides, the submissions made on behalf of the Revenue that in view of the decision of the Apex Court in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s., case (supra), the Assessing Officer is entitled to re-open the Assessment for whatever reasons and the same cannot be subjected to jurisdictional review, is preposterous. First of all, taking out a word or sentence from the entire judgment, divorced from the context and relying upon it, is not permissible (see CIT v. Sun Engg. Works (P.) Ltd. [1992] 64 Taxman 442/198 ITR 297 (SC)). It may be useful to reproduce the context in which the sentence in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s case (supra) being relied upon by the Revenue to support its case, was made. The context, is as under:—

> *"The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitutions. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed to confer jurisdiction under section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices."*

Therefore, the sentence being relied upon was made in the context of the change in law that under the amended provision 'reason to believe' that in case of escaped assessment, is sufficient to re-open the assessment. This unlike the earlier provision of Section 147(a) of the Act which required two conditions i.e. failure to disclose fully and truly all facts necessary for assessment and reason to believe that income has escaped assessment. Thus, the observations being relied upon must be read in the context in which it was rendered. On so reading the submission, will not survive.

11. Further, a reading of the entire decision, it is clear that the reasonable belief on the basis of tangible material could be, prima facie, formed to conclude that income chargeable to tax has escaped assessment. Mr. Mohanty, learned Counsel is ignoring the fact that the words 'whatever reasons' is qualified by the words 'having reasons to believe that income has escaped assessment'. The words whatever reasons only means any tangible material which would on application to the facts on record lead to reasonable

belief that income chargeable to tax has escaped assessment. This material which forms the basis, is not restricted, but the material must lead to the formation of reason to believe that income chargeable to tax has escaped Assessment. Mere obtaining of material by itself does not result in reason to believe that income has escaped assessment. In fact, this would be evident from the fact that in para 16 of the decision in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s., case (supra), it is observed that the word 'reason' in the …. 'reason to believe' would mean cause or justification. Therefore, it can only be the basis of forming the belief However, the belief must be independently formed in the context of the material obtained that there is an escapement of income. Otherwise, no meaning is being given to the words 'to believe' as found in Section 147 of the Act. Therefore, the words 'whatever reasons' in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s., case (supra), only means whatever the material, the reasons recorded must indicate the reasons to believe that income has escaped assessment. This is so as reasons as recorded alone give the Assessing Officer power to re-open an assessment, if it reveals/indicate, reasons to believe that income chargeable to tax has escaped assessment.

12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

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.***

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

15. Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found fault with. This view of the Tribunal is in accordance with the settled position in law.

16. Therefore, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

17. Accordingly, Appeal dismissed. No order as to costs.

In the instant case, admittedly it has been proved beyond doubt that the assessee was provided only with incomplete reasons upto the stage of coming to this tribunal in the re-assessment proceedings. Hence respectfully following the aforesaid decision of Hon'ble Jurisdictional High Court, we have no hesitation in holding that the entire reassessment becomes bad in law."

(EMPHASIS SUPPLIED BY US)

3.5. We find that in the aforesaid decision, the reopening in that case was made beyond four years, whereas in the instant case before us, the reopening is made within four years and hence, the applicability of proviso to Section 147 that the ld. AO should record in the reasons that there was a failure on the part of the assessee to make full and true disclosure of facts necessary for assessment would not be required in the instant case. Other than this aspect, the decision rendered by this Mumbai Tribunal in 189 ITD 450 supra would be applicable to the facts of the instant case as is evident from the para reproduced hereinabove.

3.6. Yet another legal proposition had arose in the instant case as is very much evident from the extract of the reasons furnished to the assessee is that the reopening in the instant case has been made only to make

fishing and roving enquiries by the ld. AO which is not permissible u/s.147 of the Act. Infact for each of the items mentioned in the extract of the reasons recorded, we find that assessee had already given its necessary disclosures in the financial statements and in the notes on accounts attached to those financial statements. In this regard, the ld. AR rightly placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in the case of Vipan Khanna vs. CIT reported in 255 ITR 220 (P&H); the decision of the Hon'ble Gujarat High Court in the case of DCIT Vs. Manzil Dineshkumar Shah in Tax Appeal No.451 of 2018. Moreover, we find that the Hon'ble Jurisdictional High court also in the case of PCIT vs Rajesh D Nandu (HUF) reported in 101 taxmann.com 401 (Bom HC) dated 18/12/2018 had held as under:-

> ***7.****There can be no dispute that in case where a return of income has been processed under Section 143(1) of the Act, the Revenue has a greater latitude in reopening an assessment. However, even in such cases, the reopening of an assessment can only be done if there is reason to believe that income chargeable to tax has escaped assessment. The reason recorded in support of the reopening notice must disclose the basis of the reasons to believe that income chargeable to tax has escaped assessment. The reasons must provide a link between the material available and the formation of reasonable belief that income chargeable to tax has escaped assessment. The reason to believe must be based on some material available with the Assessing Officer and no reasonable belief can be formed without some material to support the same.*
>
> ***8. We find that the impugned order of the Tribunal has correctly held that the reopening of the assessment cannot be for the purpose of fishing inquiry****. The reopening of the assessment has to be based on same material which is available with the Assessing Officer which would give rise to reason to believe that the income chargeable to tax has escaped assessment.* ***The reasons as recorded in support of the impugned notice to doubt the genuineness of the gift is not based on any material. At the highest, it is only a suspicion subject to enquiry. In fact, this is a case of fishing enquiry. Thus, there is no material available with the Assessing Officer to have the reason to believe that income chargeable to tax has escaped assessment.*** *The view taken by the impugned order of the Tribunal cannot be found fault with.*
>
> ***9.****In the above view, the question as proposed does not give rise to any substantial question of law.*
>
> **(Emphasis supplied by us)**

3.7. In view of the aforesaid observations, we have no hesitation to hold that reopening of assessment made in the instant case deserves to be quashed on all the three reasons i.e. (i) by partially furnishing the reasons recorded which is equivalent to non-furnishing of reasons to the assessee; and (ii) Reopening made in the instant case only to make fishing and roving enquiries. Hence, we quash the entire re-assessment in the instant case.

4. Since, the reopening is quashed by us, the other grounds raised by the assessee as well as by the Revenue on merits contesting various disallowances / additions need not be gone into and no opinion is rendered herein by us on the same.

5. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced on 30/11/2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(RAHUL CHAUDHARY)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 30/11/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai