

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “F”, MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.23,24&63/Mum/2022  
(Assessment years 2011-12, 2012-13 & 2013-14)**

M/s Jet Speed Realtors Unit No.111/7, Udyog Nagar, S V Road, Goregaon West, Mumbai-400 062 <b>PAN : AAGFJ0291C</b>	vs	Asst. Commissioner of Income tax Circle 32(1), Bandra Kurla Clomplex Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Shreyas Shah/ Kunal Shah/Ramesh Vora
Department represented by	Vranda U Matkari SR. AR.

Date of hearing	08-08-2023
Date of pronouncement	18-08-2023

**ORDER**

**PER BENCH**

These appeals are against the independent orders of the CIT(A)-49, Mumbai, all dated 22/11/2021 for assessment years 2011-12 to 2013-14. The issues contended in all these appeals are common and, therefore, they are heard together and disposed off through this common order.

2. The issues contended by the assessee through various grounds for all the assessment years are –

- (i) Reopening of assessment beyond 4 years without satisfying the pre-requisites under the First Proviso to section 147 of the Income-tax Act, 1961(in short, 'the Act') (**Grounds 2.1 to 2.4**);
- (ii) Additions made under section 68 with respect to loan transactions without appreciating that the assessee had furnished all the relevant details pertaining to the impugned transactions (**Ground 3**);
- (iii) Addition with respect to interest paid on loan (**Ground 4**);
- (iv) Addition made towards commission expenses with respect to the aforesaid loan (**Ground 5**).

### **ITA No.23/Mum/2022 – A.Y. 2011-12**

3. The assessee filed a return of income for A.Y. 2011-12 on 29/09/2011 declaring total income at Nil. Subsequently, the case was reopened and the assessment was completed under section 143(3) read with section 147 on 23/12/2017 where the returned income has been accepted. The Assessing Officer received certain information from Investigation Wing regarding acceptance of alleged bogus unsecured loans by the assessee and for that reasons, the assessment was once again reopened by issue of notice under section 148 on 27/03/2018. The Assessing Officer completed the assessment by making addition towards the loan taken by the assessee from one M/s Mangalmurti Impex Pvt Ltd and treated the same as unexplained cash credit under section 68 of the Act. The Assessing Officer further made the disallowance towards interest paid on the loan and the commission expenses as unexplained expenses under section 69C of the Act. Aggrieved, the assessee filed appeal before the CIT(A), who upheld the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

4. The assessee has contended the impugned issues, both on legal grounds and also on merits.

5. We will first consider the legal issue contended by the assessee in which the reopening of assessment made by the Assessing Officer is contended to be bad in law since the pre-requisite under the First Proviso to section 147 of the Act are not satisfied. The assessee has also raised another legal contention that the Assessing Officer had in first round of re-assessment proceedings examined the details pertaining to M/s Mangalmurti Impex Pvt Ltd and concluded the re-assessment accepting the returned income and therefore re-opening for the same reason is nothing but change of opinion. The extract of the notice of reassessment issued by the Assessing Officer under section 148 in which the reasons for reopening are recorded as under:-

*"A survey U/S.133A of the Income Tax Act, 1961 was conducted on the assessee by Unit-4 of Investigation Wing, Mumbai. The Asst. Director of Income Tax (Inv), Unit-4(l), Mumbai forwarded the survey report on 07-03-2018. "*

*As per survey report, survey U/S.133A was conducted on JPV Group involved in building and construction activities on 24-03-2017. The assessee firm is one of the entity of JPV Group. As per survey reports, discreet enquiries prior to the survey action had revealed that the entities of the JPV group are involved in acceptance of bogus unsecured loans from fictitious companies having no genuine activities. During the survey, statements of key persons were recorded and it was observed that JPV group concerns had accepted unsecured loans in their books of account from certain other suspicious parties including M/s. Mangal Murti Impex Pvt Ltd. Summons u/s.131 of the Act were issued to the suspicious donor parties to verify their identity and creditworthiness and the genuineness of the transactions. The summons issued to M/s. Mangal Murti Impex Pvt Ltd was returned unserved. The promoters and directors of the JPV Group were asked to present the suspicious parties for verification of the transaction. But they were unable to present any of the person related to suspicious parties. In order to verify the identity of these suspicious parties that whether these parties were carrying out any genuine business activities, the inspectors of investigation wing were directed to visit the premises of these parties. The inspectors visited the premises of these parties and have reported that all the parties were found non-existent at the locations and no traces could be found of their actual existence. These finding clearly prove that these parties including M/s. Mangal*

*Murti Impex Pvt Ltd have provided bogus unsecured loans to the JPV Group of companies.*

*For verifying the facts, assessee's case record for A.Y. 2011-12 is perused. During the year, the assessee had taken loan of Rs.1.25 crores and paid interest of Rs.5,63,227/- to M/s. Mangal Murti Impex Pvt Ltd. To examine the financial credentials of the M/s. Mangal Murti Impex Pvt Ltd balance sheet of said company was downloaded from the website of MCA. The concerns which are involved in providing the accommodation entries have some attributes viz. there are huge sundry creditors, sundry debtor and loans and advances In relation to purchase and sale shown in their respective books of accounts. Therefore, money is routed through the accounts of any of these name lending concerns - all transactions are done through banking channels. Since above set of transactions are taking place on regular basis, at a given point of time there would be sundry credits of Crores of Rupees and corresponding loans to builders / persons dealing in real estate in the accounts of these benami concerns. A simple perusal of the balance sheet filed by this concerns would usually have the following abnormal features which are otherwise not possible in a normal business transaction. In view of the above, following observations are made in case of M/s. Mangal Murti Impex Pvt Ltd.*

*(a) High Sundry Creditors = Rs.39,84,65,1667-*

*(b) The major portion of entire assets in the balance sheet comprising of Loan & Advances (20,51,72,6897-), Debtors (17,50,38,322/-). The total of these assets i.e. (38,02,11,0117-) almost match the figures of their sundry creditors (39,84,65,1667-).*

*In view of the above, it is clear that the assessee has taken bogus loan of Rs.1.25 crores from M/s. Mangal Murti Impex Pvt Ltd. The interest was shown in the books of accounts to give the unsecured loan a colour of genuineness.*

*Therefore, I have reason to believe that the income chargeable to tax above Rs.1 Lakh has escaped assessment for the A.Y. 2011-12 in the case of the said assessee within the meaning of section 147 of the Income Tax Act, 1961. The case of the assessee is therefore proposed to be reopened by issue of notice u/s.148 of the I. T. Act, 1961."*

6. The assessee submitted before the Assessing Officer that during the first round of re-assessment proceedings, the Assessing Officer had examined the loan transaction with M/s Mangalmurti Impex Pvt Ltd which is the basis of reopening now. The assessee further submitted that the assessment has been reopened beyond 4 years. However, there is no failure on the part of the assessee to disclose the material facts

fully and truly which is a pre-requisite under the provisions of section 147 for reopening beyond 4 years. The assessee also submitted that no new material or information was available against the assessee and, therefore, the reopening is nothing but merely a change of opinion. The Assessing Officer rejected the contentions of the assessee. The Assessing Officer held that in the first round of re-assessment proceedings, the Assessing Officer failed to form an opinion on the contents of the loan confirmation submitted by the assessee and, therefore, did not form an opinion on this issue. Accordingly, the Assessing Officer held that there is no question of any different or change of view / opinion. With regard to the contention of the assessee that the pre-requisite of reopening beyond 4 years has not been complied with, the Assessing Officer held that Explanation 1 to section 147 makes it clear that mere production of voluminous papers before the Assessing Officer by the assessee will not tantamount to disclosure within the meaning of section 147.

7. The CIT(A), with regard to the legal contentions of the assessee held that the Assessing Officer had tangible materials in his possession in the form of specific information received from Investigation Wing and the Assessing Officer had duly recorded the reasons for reopening based on the said materials. The CIT(A) further held that the Assessing Officer at the time of issue of notice under section 148 had a reason to believe that the income has escaped assessment and it is not the requirement that at the time of issue of notice the Assessing Officer should have finally ascertained the facts by examining the evidence or conclusion. The CIT(A) relied on various judicial pronouncements in this regard. Accordingly, the CIT(A) dismissed the legal contended before him.

8. The Ld.AR before us submitted that –

- *The reasons recorded do not whisper about failure to make a full and true disclosure as mentioned in first proviso to section 147 of the Act*
- *The assessee is nowhere connected with the alleged JPV group on which survey was conducted.*
- *Without even establishing the nexus of the assessee with the said alleged group, the Assessing Officer has without application of mind proceeded to reopen the concluded reassessment merely on the basis of reason to suspect as against reasons to believe.*
- *During the course of previous reassessment, the Assessing Officer had gone into the identical issue and did not made any addition with respect to unsecured loan and interest thereon. Hence, the action on the part of the revenue to now reopen the concluded reassessment is nothing but a change of opinion on the part of the Assessing Officer, which cannot be permitted in eye of law.*
- *Without prejudice, the department was in possession of the information gathered in the course of survey carried out on the third party as relied by the Assessing Officer in the present second reassessment. Therefore, the information as referred in the reasons recorded in , " the second reassessment cannot be termed as tangible material to reopen the concluded first reassessment.*
- *The loan was repaid up by the assessee during FY 2015-16 with the interest, after deducting TDS thereon (Page 82 to 84 of PB} and that the Assessing Officer at the time of first reassessment, accepted the transaction. Given this, it cannot be said that the assessee had withheld the primary material and Appellant failed to disclose truly and fully all material facts of the assessment.*

9. Therefore the ld AR submitted that the conditions precedent for exercise of power u/s 147 after expiry of period of 4 years of relevant assessment year are not satisfied and that assumption of jurisdiction on the part of the Assessing Officer beyond a period of 4 years is invalid and without jurisdiction. The ld AR relied on the following judicial pronouncements in this regard -

- i. *ITO vs. Kayathwal Estate (P.) Ltd [2022] 442 ITR 507 (SC) and [2022] 139 taxmann.com 316 (Guj.)*
- ii. *DCIT vs. Financial Software and Systems (P.) Ltd [2022] 447 ITR 370 (SC) and [2022] 145 taxmann.com 36 (Mad.)*
- iii. *Idea Cellular Ltd vs. DCIT [2008] 301 ITR 407 (Bombay)*

- iv. *Hitech Corporation Ltd vs. ACIT WP(L) NO.6861 of 2022 (Bombay HC)*
- v. *JM Financial Asset Management Limited vs. DCIT - ITA No. 1774/Mum/2022*
- vi. *Maharashtra Oil Extraction (P.) Ltd. vs. DCIT [2022] 139 taxmann.com 341 (Bombay)*
- vii. *Aroni Commercials Ltd. vs. DCIT [2014] 362 ITR 403 (Bombay)*
- viii. *CIT vs. Multiplex Trading & Industrial Co. Ltd [2015] 378 ITR 351 (Delhi)*

10. The Ld.DR, on the other hand, argued that the assessee first time raising the issue that the pre-requisite under the First Proviso to section 147 are not satisfied before the Tribunal. The Ld.DR further argued that the party from whom the assessee had obtained loan has not responded to the notice issued under section 133(6) and, therefore, the Assessing Officer had a reason to believe that the loan transaction is not genuine. Accordingly, the Ld.DR placed reliance on the orders of the lower authorities.

11. We heard the parties and perused the materials on record. Before proceeding further we will look at the relevant provisions of section 147 –

***[Income escaping assessment.***

<sup>72</sup> 147. If the <sup>73</sup>[Assessing] Officer <sup>74</sup>[has reason to believe<sup>75</sup>] that any income chargeable to tax has escaped assessment<sup>75</sup> for any assessment year, he may, subject to the provisions of [sections 148 to 153](#), assess or reassess<sup>75</sup> 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) :

***Provided*** that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure<sup>76</sup> on the part of the assessee to make a return under [section 139](#) or in response to a notice issued under sub-section (1) of [section 142](#) or [section 148](#) or to disclose fully and truly all material facts<sup>76</sup> necessary for his assessment, for that assessment year:

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12. Though section 147 of the Act authorizes an assessing officer to reassess income chargeable to tax if he has reason to believe that the income for any assessment year has escaped assessment, the proviso to the aforesaid section, curtails the powers to initiate reassessment proceedings beyond the period of 4 years from the end of the relevant assessment year, where the assessment has been completed under section 143(3) of the Act unless the income has escaped assessment by reason of the failure of the assessee to disclose fully and truly all material facts necessary for assessment. In other words where the assessment is sought to be reopened after the expiry of a period of four years from the end of the relevant year, the proviso to Section 147 stipulates a requirement that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary. The Courts have been consistently holding that where there was no failure on the part of the assessee to truly disclose all material facts and it was only a question of drawing an inference from the facts, reopening of assessment beyond the four years period is invalid. Therefore when a period of four years has lapsed from the end of the relevant year, the Assessing Officer has to mention what was the tangible material to come to the conclusion that there is an escapement of income from assessment and that there has been a failure to fully and truly disclose material fact.

13. In the background of this settled legal position, we will now examine the assessee's case in hand. In the given case the assessment is sought to be reopened after a period of four years, and therefore it is an undisputed fact that the proviso to Section 147 is applicable. The reasons recorded for reopening is extracted in the earlier part of this order and the gist of the is that – (i) from the enquiries conducted during the survey proceedings of JPV group the identity, creditworthiness and the genuineness of the transactions with one M/s. Mangal Murti Impex Pvt Ltd came to be examined; (ii) the Assessing Officer noticed that the assessee has taken a loan of Rs.1.25 crores from the

said party and to examine the financial credentials of the company the Assessing Officer downloaded the balance sheet from MCA site; (iii) based on the analysis of the balance sheet, the Assessing Officer concluded that the loan taken by the assessee from M/s. Mangal Murti Impex Pvt Ltd is bogus and interest paid towards the loan is not genuine; and (iv) based on this finding the Assessing Officer had a reason to believe that the income chargeable to tax has escaped assessment.

14. From the perusal of the above reasons recorded, we notice that the Assessing Officer on the basis of examination of Balance Sheet of M/s. Mangal Murti Impex Pvt Ltd has come to the conclusion that the income in the hands of the assessee has escaped assessment. However the reasons which have been recorded by the Assessing Officer for reopening of the assessment do not disclose that the assessee had failed to disclose fully and truly all material facts necessary for the purpose of assessment. In fact we notice that during the first round reassessment, the assessing officer has called for the details pertaining to the loan transactions and that the assessee has submitted the loan details including the loan confirmation, Bank statement, and the return of income of M/s. Mangal Murti Impex Pvt Ltd vide letter dated 16/12/2017 (page 42 to 47 of paper book). The Id AR brought to our attention that the reasons recorded for reopening in the first round reassessment proceedings (page 26 of paper book) is the non-genuine loan transactions the assessee has entered into with certain parties and in that context the Assessing Officer called for details pertaining to M/s. Mangal Murti Impex Pvt Ltd and after examining the details submitted the Assessing Officer did not make any addition while concluding the assessment under section 147. Therefore, there is merit in the argument that there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment. We in this regard notice that the reasons recorded do not allege any failure on part of the assessee to disclose

material facts which is the basis on which the reopening is done. In the reasons recorded, the Assessing Officer has elaborated only about the survey proceedings of JPV Group and the enquiry done with regard to the loan transactions of JPV group with certain non-genuine parties including M/s. Mangal Murti Impex Pvt Ltd. The Assessing Officer has not mentioned about any new material that has been brought on record with regard to the loan transaction basis which assessee's case is reopened. Though the Assessing Officer has recorded certain findings with regard to the movement of assets and liabilities from the analysis of the balance sheet of M/s. Mangal Murti Impex Pvt Ltd, there is no specific finding with regard to what is the failure on part of the assessee to disclose material facts. From the perusal of records we notice that the assessee has recorded the loan transactions with M/s. Mangal Murti Impex Pvt Ltd including interest and commission and in the first round of proceedings has also furnished the confirmations etc. In our considered view, a mere recording that "I have reason to believe that the income chargeable to tax above Rs.1 Lakh has escaped assessment for the A.Y. 2011-12 in the case of the said assessee within the meaning of section 147 of the Income Tax Act, 1961" does not mean that the restriction imposed by the proviso to Section 147 of the Act is fulfilled by the Assessing Officer. In view of these discussions and considering the facts of the present case in the absence of any allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment in the notice for reassessment issued after the expiry of four years from the end of the relevant assessment year under section 148 of the Act, is barred by limitation prescribed in proviso to section 147 of the Act, without jurisdiction. Accordingly we hold that the notice issued under section 148 of the Act to be invalid and the reassessment done under section 147 of the Act based on the said notice is to be quashed. Since we have quashed the reassessment, the additions made in the said proceedings do not survive and hence deleted.

**ITA No.24/Mum/2022 (A.Y. 2012-13)**

15. For the assessment year 2012-13, the assessee filed the return of income 29/09/2012 declaring total income at Nil. Subsequently, the case was selected for scrutiny under CASS and assessment was completed under section 143(3) on 19/03/2015 determining income at Rs.1,83,29,340/-. On appeal, the CIT(A) gave major relief to the assessee whereby the total income for A.Y. 2012-13 was recomputed at Rs.6,45,010/-. The Assessing Officer subsequently issued notice under section 148 recording the reasons similar that in AY 2011-12 wherein it is stated that the Assessing Officer has reason to believe that the assessee has shown bogus loan of Rs.70,00,000/- and interest of Rs.7,00,077 from Om Sai Stone Ltd and interest of Rs.10,14,300/- from M/s Mangalmurti Impex Pvt Ltd that has escaped assessment.

16. The parties before us made similar submissions made in appeal for A.Y. 2011-12 as the facts and circumstances are identical. For AY 2012-13 also, the assessment under section 143(3) was completed on 19.03.2015, and the period of 4 years from the end of the relevant assessment year has already expired when the notice under section 148 of the Act was issued on 29.03.2019. Therefore, the first proviso to section to section 147 is applicable for the year under consideration also. The ld AR drew our attention to the reasons recorded for reopening the assessment (page 49 of paper book for AY 2012-13) wherein we notice that the reasons recorded are same as in the reasons recorded for reopening the assessment of AY 2011-12. In other words, the Assessing Officer in the reasons recorded does not allege any failure on part of the assessee to disclose material facts which is the basis on which the reopening is done. We further notice that the assessee during the proceedings under section 143(3) has produced the details such as

loan confirmation, bank statement etc., of the loan creditors M/s Mangalmurti Impex Pvt Ltd and Om Sai Stone Ltd (page 34 to 37 of paper book for AY 2012-13). It is also noticed that the Assessing Officer in the notice under section 148 has not mentioned about any new material that has been brought on record with regard to the loan transaction basis which assessee's case is reopened. Accordingly our decision for AY 2011-12 as held in the earlier part of the order is mutatis mutandis applicable for AY 2012-13 also. Therefore we quash the order of assessment passed under section 147 for AY 2012-13 and the additions made therein stand deleted.

**ITA 63/Mum/2022 (A.Y. 2013-14)**

17. For A.Y. 2013-14 the return of income declaring total income at NIL was filed on 29/09/2013. Subsequently, the assessment was completed under section 143(3) on 16.03.2016. The Assessing Officer subsequently issued notice under section 148 recording the reasons similar that in AY 2011-12 wherein it is stated that the Assessing Officer has reason to believe that the assessee has shown bogus loan and interest payment totaling to Rs.2,62,40,407 from M/.Madan Impex Pvt Ltd., Om Sai Stone Ltd, M/s.Rajat Diamond Exim Pvt Ltd., M/s. Nikhil Gems Pvt Ltd, M/s.Dev Darshan Diamonds Pvt Ltd and M/s Mangalmurti Impex Pvt Ltd that has escaped assessment. The period of 4 years from the end of the relevant assessment year has already expired when the notice under section 148 of the Act was issued on 29.03.2019 (page 58 of paper book for AY 2013-14). Therefore, the first proviso to section to section 147 is applicable for the year under consideration also. On perusal of the reasons recorded for the year under consideration we notice that the Assessing Officer in the reasons recorded does not allege any failure on part of the assessee to disclose material facts which is the basis on which the reopening is done. It is also noticed that the Assessing

Officer during the course of assessment proceedings under section 143(3), the assessee has submitted the relevant details pertaining to all the above mentioned loan creditors before the Assessing officer (pages 35 to 40 & 43 to 51 of paper book for AY 2013-14) and that the Assessing Officer in the notice under section 148 has not mentioned about any new material that has been brought on record with regard to the loan transaction basis which assessee's case is reopened. Accordingly our decision for AY 2011-12 as held in the earlier part of the order is mutatis mutandis applicable for AY 2013-14 also. Therefore we quash the order of assessment passed under section 147 for AY 2013-14 and the additions made therein stand deleted.

18. The ld AR and Ld DR presented arguments with regard to the merits of the issues under consideration for all the assessment years. Since we have held the appeal in favour of the assessee on legal grounds, the submissions on merits have become academic and does not warrant any separate adjudication.

19. In result the appeals for AY 2011-12 to 2013-14 are allowed

**Order pronounced in the open court on 18/08/2023.**

**Sd/-**

**sd/-**

<b>(ABY T VARKEY)</b>	<b>(PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 18<sup>th</sup> August, 2023  
Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

**BY ORDER,**

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**Asstt. Registrar / Senior Private Secretary  
ITAT, Mumbai**