

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

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

ITA No.518/Bang/2023
Assessment Year: 2010-11

The United Theological College No.63, Miller's Road Benson Town Bangalore 560 046 PAN NO : AABFT6448G	Vs.	ITO (Exemptions) Ward-2 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Joseph Vargese, A.R.
Respondent by	:	Shri D.S. Karthik, D.R.

Date of Hearing	:	30.11.2023
Date of Pronouncement	:	01.12.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC passed u/s 250 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2010-11 dated 19.5.2023. The assessee has raised following grounds of appeal:

- 1. “The order of the learned Commissioner of Income tax (Appeals) passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant’s case.*
- 2. The learned Commissioner of Income-tax (Appeals) failed to adjudicate all the grounds of appeal and the order passed is in violation of the principles of natural justice on the facts and circumstances of the case.*
- 3. The learned Commissioner of Income-tax (Appeals) is not justified in law in holding that the appellant is not interested in prosecuting the appeal when in fact the appellant was not aware of the procedure and consequently the order passed under section 250 of the Act is in violation of the principles of natural justice.*

4. *The learned Commissioner of Income-tax (Appeals) is not justified in law in not adjudicating the specific issues raised by the appellant in the grounds of appeal on the facts and circumstances of the case.*
5. *The learned Commissioner of Income-tax (Appeals) is not justified in law in passing the impugned order, without granting another opportunity of hearing for filing the written submissions on each of the grounds of appeal and relevant documents in support of the case of the appellant on the facts and circumstances of the case.*
6. *The learned Commissioner of Income-tax (Appeals) failed to appreciate that the Assessing officer has erred in making the addition in respect of investment to the tune of Rs. 84,36,390/- on the facts and circumstances of the case.*
7. *The learned Commissioner of Income-tax (Appeals) failed to appreciate that the investments were made in the earlier years and no violation has taken place during the impugned assessment year on the facts and circumstances of the case.*
8. *The Appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*
9. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”*
2. The assessee has also raised additional grounds vide petition dated 17.7.2023 for admission of additional grounds as follows:
 1. *The assumption of jurisdiction by the learned Assessing officer under section 147 of the Act is without jurisdiction on the facts and circumstances of the case.*
 2. *The notice issued under section 148 of the Act and assumption of jurisdiction under section 147 of the Act is a mere change of opinion which is impermissible in law on the facts and circumstances of the case.*
 3. *The notice issued under section 148 of the Act is unsigned and therefore invalid and consequently subsequent proceedings are bad in law on the facts and circumstances of the case.*
 4. *The notice issued under section 148 of the Act by the learned Assistant Commissioner of Income-tax (Exemptions), Circle-1 is without jurisdiction and consequently subsequent proceedings are without jurisdiction and bad in law.*
 5. *The notice issued under section 148 of the Act is defective and bad in law as the same does not strike off the relevant portion and whether the same is issued to assess or reassess the income/loss for the assessment year and*

further the notice ought to have been issued to reassess the income of the appellant on the facts and circumstances of the case

6. *The learned Commissioner of Income-tax (Appeals) failed to appreciate that consent cannot confer jurisdiction to the learned Assessing officer to disallow the investments under section 11(5) of the Act and it should have been done in accordance with law on the facts and circumstances of the case.*
7. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
8. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

2.1 The assessee also raised one more additional grounds vide petition dated 20.11.2023 for admission of additional grounds as follows:

1. *The condition precedent as per the first proviso to section 147 of the Income-tax Act, 1961 before substitution by the Finance Act, 2021 has not been complied with by the authorities below for assumption of jurisdiction to issue the notice under section 148 of the Act and consequently the notice issued under section 148 of the Act is bad in law on the facts and circumstances of the case.*
2. *The satisfaction recorded by the learned Commissioner of Income-tax (Exemptions), Bengaluru to the reasons recorded by the Assessing officer is done in a mechanical manner and the same is unsustainable in law on the facts and circumstances of the case.*
3. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
4. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

2.2 The ld. A.R. pleaded that the additional grounds do not involve any investigation of any facts otherwise on record with the department and are also pure question of law. Hence, he prayed that these additional grounds may be admitted and placed reliance on the judgement of Hon'ble Supreme Court in the case of National

Thermal Power Company Limited Vs. CIT, reported in 229 ITR 383 and also on the ratio of the decision of the Hon'ble High Court of Karnataka in the case of Gundur Thimmappa & Sons Vs CIT, reported in 70 ITR 70.

3. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above grounds. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

4. First of all, we will deal with the additional grounds raised by the assessee vide petition dated 20.11.2023.

4.1 The ld. A.R. submitted that the assessee is an association of persons, trust which filed its return of income for the AY 2010-11 declaring surplus as NIL after claiming exemption under section 11 of the Act for an amount of Rs. 2,93,16,476/- as application out of the gross receipts, a sum of Rs. 2,85,67,197/-. The return of income was processed under section 143(1) of the Act. Subsequently an assessment order was passed under section 143(3) of the Act dated 23.10.2012 accepting the taxable income as Rs. NIL. However, the case of the assessee was reopened vide notice issued under section 148 of the Act by the ACIT Income tax (Exemptions), Circle 01, Bangalore after allegedly obtaining approval from the CIT(Exemptions), Circle -1, Bangalore. The learned Assessing officer held that the assessee had made investments in contravention to the provisions of section 11(5) of the Act and consequently disallowed a sum of Rs. 84,36,390/-. The learned Assessing officer in the assessment order has stated that the assessee represented through

its authorized representative had during the course of appearance on 23.11.2017 and 27.11.2017 agreed for the said disallowance. The assessee being aggrieved by the said assessment order passed under section 147 r.w.s 143(3) of the Act dated 30.11.2017 served on the assessee on 28.12.2017 preferred an appeal before the learned Commissioner of Income-tax (Appeals) on 25.01.2018. The learned Commissioner of Income-tax (Appeals) issued hearing notices under section 250 of the Act dated 01.05.2023, 28.02.2023, 02.02.2023, 03.01.2023 and 05.03.2021 and letter dated 01.11.2022 intimating the assessee of enablement of communication window with the CIT(A). The assessee received the above notices but was under the erroneous impression that similar to the proceedings before the Assessing officer, letters requesting for specific information akin to notices issued under section 142(1) of the Act would be issued by the learned Commissioner of Income-tax (Appeals). The assessee was not aware of the procedure in pursuing an appeal before the learned Commissioner of Income-tax (Appeals) and therefore no replies were filed in response to the notices issued under section 250 of the Act.

4.2 The ld. A.R. submitted that the learned Assessing officer failed to appreciate that consent cannot confer jurisdiction and even though the assessee's authorized representative had agreed for the disallowance the disallowance ought to have been made after considering the validity to assume jurisdiction under section 147 of the Act and considering whether the entire amount of Rs. 84,35,390/- is liable for disallowance under section 11(5) of the Act. The assessee placed reliance on the following decisions:-

- a) Pullangode Rubber Produce Co. Ltd. v. State of Kerala (1973) 91 ITR 18 (SC) where the Hon'ble Supreme Court held that *"4.....It is no doubt true that entries in the account books of the assessee amount to an admission that the amount in question was laid out or expended for the cultivation, upkeep or*

maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.”

- b) *Maynak Poddar (HUF) v. Wealth Tax Officer (2003) 262 ITR 633 (Calc) where it was held that “Even if the assessee had included the same in his return, that will not preclude the assessee from claiming the benefit of law. There cannot be any estoppel against statute. A property, which is not otherwise taxable, cannot become taxable because of misunderstanding or wrong understanding of law by the assessee or because of his admission or on his misapprehension. If in law an item is not taxable, no amount of admission or misapprehension can make it taxable. The taxability or the authority to impose tax is independent of admission. Neither there can be any waiver of the right by the assessee. The department cannot rely upon any such admission or misapprehension if it is not otherwise taxable.”*
- c) *Bhandari Metals v. State of Karnataka ILR 2004 Kar 2025 where this Hon’ble Jurisdictional High Court held that “12. The appellant does not dispute the fact that it had voluntarily filed a return offering the value of non-ferrous metal scrap brought by it into the local area to entry tax or that it had paid the entry tax on the said value or that the assessing authority had accepted the said return and passed the assessment orders. But the question is whether the said action on the part of the appellant bars the appellant from challenging the order of assessment in appeal when once it realizes that the goods in question were exempt from tax.*
- 13. The question is covered by the decision of a Division Bench of this Court in Narasopalli Oil Mills v. State of Mysore where an identical question was considered. The Division Bench held:*

“The petitioner cannot ascribe any error in the order of the Commercial Tax Officer since his own return was accepted by the assessing authority and there was no dispute that the sales were not exigible to tax under the Central Sales Tax Act. If the assessee makes in a return and submits to be assessed to tax before the assessing authority, he is not estopped or precluded by any law from preferring an appeal and showing to the appellate authority that the sales are, in fact, not exigible to tax. If such a contention is taken, the appellate authority is under a duty to examine the matter and determine the question whether or not the sales are exigible to tax. There is no question of invoking the doctrine of estoppel. In our opinion, the Deputy Commissioner of Commercial Taxes as also the Tribunal have failed to exercise the jurisdiction vested in them.” The second question therefore has to be answered in the affirmative in favour of the assessee.”

d) CIT v. Mr. P. Firm, Muar [1965] 56 ITR 67 (SC) where the Hon’ble Supreme Court held that:

“The doctrine of "approbate and reprobate" is only a species of estoppel ; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute. If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income-tax Officer has no power to impose tax on the said income.

The decision in Amarendra Narayan Roy v. Commissioner of Income-tax AIR 1954 Cal. 271 has no bearing on the question raised before us. There the concessional scheme tempted the assessee to disclose voluntarily all his concealed income and he agreed to pay the proper tax upon it. The agreement there related to the quantification of taxable income but in the present case what is sought to be taxed is not a taxable income. The assessee in such a case can certainly raise the plea that his income is not taxable under the Act. We, therefore, reject this plea.”

e) *Nirmala L. Mehta v. A. Balasubrimaniam* CIT (2004) 269 ITR 1 (Bom.) where the Hon'ble Bombay High Court held that :

“The problem arose because the petitioner in her return for the assessment year 1988-89 filed on 30-6-1988 offered the prize money of the lottery to tax rather a fundamental error of law on the part of the assessee, but that error of law once detected by the petitioner, it was urged before the Commissioner of Income-tax that the prizemoney earned by the petitioner could not be taxed under Income-tax Act, 1961. It is true that it was at a late stage that such contention was raised by the petitioner, but the said contention was a pure question of law and the Commissioner of Income-tax ought to have considered the said contention on its merits and ought not to have declined to entertain on the ground of delay. There cannot be any estoppel against the Statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.”

f) *S.R. Koshti v. CIT* (2005) 276 ITR 165 (Guj.) where the Hon'ble Gujarat High Court held that

“18. The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.....

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.”

4.3 The ld. A.R. submitted that the assessee filed a rectification application dated 11.01.2018 under section 154 of the Act before the learned Assessing officer in view of the fact that a sum of Rs. 35,01,390/- was correctly invested in accordance with the provisions of section 11(5) of the Act. The learned Assessing officer in view of the above application passed an order under section 154 of the Act dated 28.06.2019 granting relief to the extent of a sum of Rs.35,01,390/- and disallowed a sum of Rs.49,35,000/- under section 11(5) of the Act.

4.4 He submitted that the learned Commissioner of Income-tax (Appeals) ought not to have passed an ex-parte order and mere non-exercise of right to be heard by the assessee during the proceedings could not be reason enough for the Commissioner (Appeals) to not deal with issues raised by the assessee on the merits of the case. He relied on the decision of the Hon'ble Mumbai Tribunal in the case of Marvel Industries Ltd. v. DCIT (2022) 140 taxmann.com 430 (Mum-Trib.).

4.5 He submitted that the assessee failed to appreciate that assumption of jurisdiction under section 147 of the Act is bad in law on the facts and circumstances of the case. The Proviso to section 147 of the Act states that:

“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 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 necessary for his assessment, for that assessment year”.

4.6 The Id. A.R. submitted that it has disclosed fully and truly all material facts necessary for the assessment and consequently the assumption of jurisdiction under section 147 of the Act is bad in law. He submitted that the notice issued under section 148 of the Act dated 31.03.2017 is unsigned and therefore invalid and consequently the subsequent proceedings are without jurisdiction. The assessee placed reliance on the decisions of CIT v. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC) and CIT & Another v. B.N. Keshav (Karn.) in ITA No. 21 of 2003 dated 03.04.2008.

4.7 He further submitted that the learned Assessing officer had verified all the information in relation to investments made by the assessee during the course of assessment proceedings under section 143(3) of the Act and therefore the subsequent issue of notice under section 148 and assumption of jurisdiction under section 147 is a mere change of opinion amounts to review of the earlier assessment order passed under section 143(3) of the Act which is impermissible in law on the facts and circumstances of the case. He placed reliance on the following decisions:-

- (i) CIT v. Kelvinator of India 320 ITR 561
- (ii) Dell India Pvt. Ltd. v. JCIT (2021) 432 ITR 212 (Karn.)
- (iii) PCIT v. Fibres and Fabrics International Pvt. Ltd. (2022) 139 taxmann.com 561 (Karn.)
- (iv) CIT v. Bharatiya Reserve Bank Note Mudran Pvt Ltd in ITA No. 433 of 2011 dated 11.08.2011 (Kar)
- (v) ACIT v. Marico Ltd 117 taxmann.com 244 (SC).
- (vi) ACIT v. Ms Kotarki Constructions Pvt Ltd in WA No. 842 of 2018 dated 20.03.2021 (Kar).

(vii) CIT v. Chaikat Agencies Pvt Ltd 314 ITR 200 (Mad)

4.8 He submitted that the notice issued under section 148 of the Act by the learned Assistant Commissioner of Income-tax (Exemptions), Circle-1 is without jurisdiction and consequently subsequent proceedings are without jurisdiction and bad in law.

4.9 He submitted that the notice issued under section 148 of the Act is defective as the same does not mention whether the same is issued to assess or reassess the income/loss for the assessment year on the facts and circumstances of the case. Further when there is already an assessment order passed, the notice ought to have been issued to reassess the income of the assessee. The ld. A.R. placed reliance on the following decisions:-

- i) Standard Chartered Finance Limited Vs. CIT, 381 ITR 453 (SC).
- ii) CIT Vs. Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 (Kar).
- iii) Mohd Farhan A. Shaikh v. DCIT (2021) 125 taxmann.com 253 (Bombay).
- iv) CIT Vs. B.N.Keshav (ITA No.21/2003 dated: 3rd April, 2008).
- v) CIT Vs. Kurban Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC).

4.10 Further he submitted that the notice issued under section 148 of the Act dated 31.03.2017 for the AY 2010-11. The notice for reopening the assessment under section 147 rws 148 of the Act was issued for reopening the assessment after a period of four years from the end of the Assessment Year 2010-11 and the first proviso to section 147 of the Act will be applicable on the facts and circumstances of the case and the said proviso is extracted here for ease of reference:

“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 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 necessary for his assessment, for that assessment year”.

4.11 He submitted that the reasons recorded for issue of notice under section 148 of the Act was obtained by the assessee by filing of an RTI on 18.09.2023 before the learned Income Tax Officer, Exemptions Ward – 2, BLR and he further submitted that there is no allegation in the reasons recorded that the assessee has failed to disclosed fully and truly all material facts or any allegations of failure 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. Consequently, when the necessary conditions for invoking the provisions of section 147 of the Act have not been met the assumption of jurisdiction under section 147 of the Act is bad in law on the facts and circumstances of the case.

- a) He placed reliance on the decision of this Tribunal in the case of M/s. Gokaldas Exports v. DCIT, Circle-11(2), Bengaluru in ITA No. 1062/Bang/2004 dated 31.03.2023
- b) He also placed reliance on the decision of the Hon'ble Madras High Court in Fenner (India) Ltd. v. DCIT (2000) 241 ITR 672 (Madras).
- c) He also placed reliance on the following decisions
 - i. CIT, Bangalore v. Chaitanya Properties Pvt. Ltd. (2016) 67 taxmann.com 201 (Karn)
 - ii. CIT v. Motor Industries Co. Ltd. in ITA No. 220 of 2009 dated 15.12.2014 (Karn.)

- iii. CIT v. Fibres and Fabrics International Pvt. Ltd. in ITA NO. 310 fo 2015 dated 22.09.2015 (Karn.)
- iv. Sitara Diamond Pvt. Ltd. v. DCIT (2012) 345 ITR 91 (Bom)
- v. CIT v. Ankit C Maheshwari (2014) 366 ITR 146 (Gujarat)
- vi. Dr. Wilmar Schwabe India Pvt. Ltd. v. ACIT (2023) 152 taxmann.com 428 (Delhi)

4.12 In view of the above submissions, the ld. A.R. submitted that the learned Assessing Officer has erred in assuming jurisdiction under section 147 rws 148 of the Act and consequently all subsequent proceedings including the assessment order passed are bad in law on the facts and circumstances of the case.

5. On the other hand, the ld. D.R. submitted that the assessment has been rightly reopened and there is no lapse on the part of ld. AO in reopening the assessment and he supported the order of the lower authorities.

6. We have heard the rival submission and perused the materials available on record. In this case, reason recorded for reopening of the assessment, which reads as follows:

“It was noticed that assessee had made investment to tune of Rs.28,00,000/- in CRB Capital Markets Limited, which is not a prescribed mode of investment as per section 11(5) of Income Tax Act, 1961. As per provisions of section 13(1)(d)(i) if any funds of trust or institution are invested or deposited after 28th February, 1983 otherwise than in any one or more of the forms or modes specified in subsection (5) of section 11, then nothing contained in section 11 shall operate so as to exclude any income thereof. Also, it was noticed that the investment in CRB Capital market Limited which is in contravention of prescribed modes of investment were not liquidated and continues to be reflected as investment till date. Also, it was observed that assessee trust has not included certain receipts from foreign contribution as part

of income claiming that they are received for specific purpose. The receipts cannot be exempted from computation of Income unless the receipts are of nature of corpus donations or received with specific direction (supposed to be used only for the stated purpose only). In case of assessee trust, it was observed that foreign contribution (received in FCRA designated bank account No.0429101006260) is transferred to another Savings Bank Account (Account No.0429101003275) meant for local contribution. Thus, it is evident that assessee mixed up foreign contribution and local contribution and there being no clear demarcation of utilization of specific funds received in FCRA account, all the receipts in FCRA account ought to be considered as income of the assessee trust.

Therefore, I have reason to believe that the income chargeable to tax has escaped assessment within the meaning of sect. 147 of the IT Act.”

6.1 In this case, original assessment has been completed u/s 143(3) of the Act vide assessment order dated 23.10.2012 and thereafter notice u/s 148 of the Act has been issued to the assessee vide notice dated 31.3.2017. Thus, the first proviso of this section 147 of the Act is very relevant herein, which reads as follows:

“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 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 necessary for his assessment, for that assessment year.”

6.2 The contention of the Id. A.R. is that when the original assessment was completed u/s 143(3) of the Act, thereafter notice u/s 148 of the Act for reopening of assessment cannot be given after expiry of 4 years from the end of relevant assessment years unless any income chargeable to tax has escaped assessment for this assessment year and the reason of the failure on the part of the assessee to make a return u/s 139 of the Act or in response to notice u/s 142(1) or 148 of the Act or to disclose fully and truly all material facts necessary for its assessment, for this assessment year.

6.3 We have carefully gone through the reason recorded for reopening of assessment as reproduced above. We do not find that there is any finding recorded to the effect that assessee failed to disclose fully and truly all material facts necessary for relevant assessment year. There is no allegation by ld. AO while recording the reason that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, which result in reopening of assessment. The allegation by the ld. AO is that the assessee mixed up foreign contributions and local contributions and also made investment in CRB Market Limited, which is not the prescribed mode of investments. The ld. A.R. submitted before us that all these details were made available to the ld. AO at the time of completion of original assessment u/s 143(3) of the Act on 23.10.2012 and after considering all information furnished at the time of original assessment, the ld. AO passed the said original assessment order. Now he is relooking the same records with him to issue a notice u/s 148 of the Act. If there is a failure on the part of ld. AO to consider the various documents filed by the assessee at the time of original assessment u/s 143(3) of the Act, he cannot revisit these documents after the expiry of 4 years from the end of relevant assessment years as there was no failure on the part of assessee to disclose all material facts necessary for the purpose of assessment, since there was no allegation by the ld. AO while recording the reasons for reopening of assessment to the effect that the assessee has failed to disclose fully and truly all material facts necessary for its assessment for this assessment year. In such circumstances, we are not in agreement with the ld. D.R. that the assessment is validly reopened vide notice dated 31.3.2017. This view of ours is supported by various case laws cited by the assessee, which was reproduced in earlier paras. Accordingly, we quash the reassessment order framed in this case on this primary issue.

6.4 Since we have quashed the reassessment order itself, we refrain to adjudicate other additional grounds as well as main grounds.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 1st Dec, 2023

**Sd/-
(Beena Pillai)
Judicial Member**

**Sd/-
(Chandra Poojari)
Accountant Member**

Bangalore,
Dated 1st Dec, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**