IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)

ITA Nos. 1677 & 1676/MUM/2024
Assessment Years: 2016-17 & 2017-18

M/s Union Bank of India, Finance & Accounts, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021. **PAN NO. AAACU 0564 G** **Appellant**	**Vs.**	Dy. CIT, Circle – (LTU) 2, Room No. 421, 4th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020. **Respondent**

ITA No. 1959/MUM/2024
Assessment Year: 2016-17

Asst. CIT, Circle-3(4), Room No. 559, 5th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020. **Appellant**	**Vs.**	M/s Union Bank of India, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021. **PAN NO. AAACU 0564 G** **Respondent**

Assessee by	:	Mr. C Naresh
Revenue by	:	Mr. Ankush Kapoor, CIT-DR

Date of Hearing	:	02/07/2024
Date of pronouncement	:	11/07/2024

ORDER

PER OM PRAKASH KANT, AM

The captioned appeals by the assessee and Revenue for assessment year 2016-17 are directed against order dated 16.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)']. The appeal for assessment year 2017-18 preferred by the assessee, is directed against order dated 16.02.2024 passed by the Ld. CIT(A). As common grounds are involved in these appeals therefore, same were heard together and disposed off by way of this consolidated order for convenience.

3. Firstly, we take up the appeal of the assessee for assessment year 2017-18 for adjudication. The grounds raised by the assessee are reproduced as under:

> ***Validity of assessment order***
>
> *1.1 On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in upholding the order passed u/s 144B, even when no time was given to appellant to furnish replies to the draft assessment order.*
>
> ***Reopening of Assessment***
>
> *2.1 On the facts and in the circumstances of the case and in law, the la. CIT(A) erred in upholding the reopening proceedings even when no new tangible material was found and the reopening was based on materials already on record.*
>
> *2.2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the reopening proceedings even when the reopening was only based on a change of opinion.*

Addition on account of opening balance of FCTR

3.1 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO charging to tax the opening balance of Foreign Currency Translation Difference (FCTR).

3.2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have appreciated that even as per transition provisions of Income Computation and Disclosure Standards (ICDS), it is only the income arising in the previous year which can be charged to tax.

3.3 Without prejudice to above, Income Computation and Disclosure Standards (ICDS), the Id. CIT(A) failed to note that as per the provisions of the Act, it is only the income of the previous year that can be charged to tax and the Income Computation and Disclosure Standards (ICDS) clearly provide that in case of conflict the provisions of the Act shall prevail.

Addition on account of interest accrued but not due

4.1 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO charging to tax the amount of interest accrued but not due on securities, without appreciating that the charge to tax will arise only if there is a right to receive the income.

4.2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in relying on Question no. 18 of CBDT circular 10/2017 where the issue related to computation of capital gain and was not on computation of income from business or profession.

4. Briefly stated, facts of the case are that the assessee filed its return of income on 29.11.2017 and assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 26.12.2019 determining total income at Rs.53,43,27,11,690/- under normal provisions of the Act and book profit of Rs.6,24,44,64,632/- u/s 115JB of the Act. Subsequently, the assessment was reopened by way of issue of notice u/s 148 of the Act after recording reasons to believe that income escaped assessment. Thereafter, statutory notices were issued and after considering submission of the assessee, the Assessing Officer made

addition for opening balance foreign currency translation reserves amounting to Rs.103,89,93,694/- and interest accrued but not due, amounting to Rs.314,72,09,352/-.

5. On further appeal, the assessee challenged the validity of the reassessment proceedings as well as addition on merit. The Ld. CIT(A) upheld the validity of the assessment as well as sustained the addition on merit.

6. Aggrieved, the assessee is in appeal before the Income-tax Appellate Tribunal (in short the 'Tribunal')by way of raising grounds as reproduced above.

7. Before us, the assessee filed a Paper Book containing pages 1 to 99.

8. With reference to ground No. 2 challenging reopening proceedings on the ground of 'change of opinion', the Ld. counsel for the assessee referred reasons recorded available on page 2 and 3 of the Paper Book and submitted that no new tangible material or information has been referred by the Assessing Officer for reopening of the assessment, therefore, the Assessing Officer has reopened the assessment merely on the basis of change of opinion on the same very material, which was available to him during the assessment proceedings u/s 143(3) of the Act. The Ld. counsel for the assessee referred to the decision of the Hon'ble Bombay High Court in the

case of **HDFC Bank Ltd. reported in 162 taxmann.com 390 (Bom).** The Ld. counsel also referred to the decision of the Hon'ble Bombay High Court in the case of **Castrol India Ltd. reported in 162 taxmann.com 51**.

8.1 On the contrary, the Ld. Departmental Representative (DR) referred to the decision of the Hon'ble Punjab and Haryana High Court in the case of Greater Mohali Area Development Authority v. DCIT CWP No. 26125 of 2017.

8.2 The reasons recorded for the year under consideration are reproduced as under:

> *"Sir/ Madam/ M/s,*
>
> ***Subject: Communication of reasons of reopening u/s 147 for A.Y - 2017-18 in the case of UNION BANK OF INDIA reg.***
>
> *The assessee Union Bank of India, PAN: AAACU0564G, for A.Y.2017-18 is assessed to tax in this charge. In this case return of income was filed on 29.11.2017 declaring total income at Rs. 4432,02,01,950/-. The assessment was completed u/s. 143(3) of the IT Act assessing the total taxable income of Rs. 5343,27,11,090/-.*
>
> *2. It is found from the return and the details available on record that, the assessee's income chargeable to tax has been under assessed on account of following issues:*
>
> *2.1 Foreign Exchange gains not offered to tax in accordance with 43AA r.w.s 145(2) of the Act.: In assessee's case, on examination of Annual Accounts of the assessee, it was found from Schedule 2 being Reserves &Surplus to Balance Sheet under the head Foreign Currency Translation Reserve the balance in FCTR as on 01.04.2016 was reported at Rs. 10775.91 Lakh. As per section 43AA of the IT Act as amended by Finance Act 2018 with retrospective effect from AY 2017-18, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss as the case may be and such gain or loss shall be computed in accordance with the ICDS notified by the government under sub section (2) of section 145. The assessee has however not offered the opening balance of FCTR for*

computing taxable income resulting in under assessment of taxable income to this extent for the year.

2.2 Interest accrued, but not due, not offered to tax on accrual basis: It is found from the computation sheet filed by the assessee that deduction was claimed for an amount of Rs. 31472.09 Lakhs towards interest accrued but not due as on last day of the previous year. As clarified by CBDT in circular No.10/2017, interest income needs to be offered on accrual basis. As per ICDS notified by the government under sub section (2) of section 145 interest income needs to be offered to tax on accrual basis and assessee has not offered the same to tax in computing taxable income resulting in under assessment of taxable income to this extent for the year.

DEEPAK SHUKLA

DCIT/ACIT, Cir.-3(4), Mumbai

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)"

9. We have heard rival submission of the parties on the issue of validity of the reassessment. We find that the Ld. CIT(A) has rejected the contention of the assessee that there was no new tangible material and assessment has been reopened merely on the basis of the change of the opinion based on the same material which was available during regular assessment. The Ld. CIT(A) in para 6.2.3 of the impugned order has rejected the contention of the assessee that no new material is available observing as under:

"6.2.3 In view of the above, the appellant's contention that all the documents were already available with the Department while completing the assessment earlier u/s. 143(3) of the Act and no other new tangible material was available there to reopen the assessment is not acceptable."

9.1 The Ld. CIT(A) with reference to the foreign exchange gains not offered to tax in accordance with section 43AA r.w.s. 145(2) of the Act upheld the validity of the reassessment on the reasoning that

Assessing Officer reopened the assessement in view of change in section 43AA of the Act with retrospective effect from assessment year 2017-18. Regarding another issue of interest accrued, the Ld. CIT(A) in para 6.2.6 observed that assessee did not offer the interest on accrual basis as clarified by the Central Board of Direct Taxes (CBDT). The relevant paragraph of the order of the Ld. CIT(A) are reproduced as under:

> *"6.2.5 However, the issue involved in the above case i.e., change in the method of accounting followed by the assessee. In the instant case, the assessment order is reopened based on escapement of income noticed after completion of the assessment u/s. 143(3) of the Act. The Assessing Officer has identified that the appellant has not disclosed Foreign Currency Translation Reserve balance as per Section 43AA introduced as per Finance Act 2018 with retrospective effect from AY 2017-18. Which needs to be computed in accordance with ICDS notified by the government under Section 145(2) of the It Act. The Assessing Officer found that the appellant has not offered the opening balance of FTCR for computing total income resulting in under assessment of total income and thus reopened the assessment.*
>
> *6.2.6 The Assessing Officer has also noticed that interest accrued but not due was not offered to tax on accrual basis and as clarified by CBDT circular No. 10 /2017, interest income needs to be offered on accrual basis as per ICDS which has resulted in escapement of income chargeable to tax to the tune of Rs.314.7209 crores."*

9.2 Apparently, according to the Ld. CIT(A), the issue was not considered while completing assessment u/s 143(3) of the Act and being based on a tangible material available from the record, so he upheld validity of the reassessment. The relevant para of the Ld. CIT(A) is reproduced as under:

> *"6.2.8 It is evident from the above that the objections raised by the assessee against reopening of the assessment u/s. 147 of the Act were disposed of by the Assessing Officer. The Assessing Officer has reopened the assessment as he has reason to believe that income*

chargeable to tax has escaped assessment. The reason to believe is on tangible material available from record wherein the issues were not considered while completing assessment u/s 143(3) of the IT Act."

9.3 Further, the Ld. CIT(A) referred to the decision of the Hon'ble Supreme Court in the case of Export Credit Guaranteed India Ltd. (supra) wherein it is held that when there was a failure on the part of the Assessing Officer to apply his mind during the original assessment proceedings on the points which assessment was sought to be reopened, it would not be case of change of opinion.

9.4 However, we may like to refer to the finding of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) wherein, the Hon'ble High Court has observed that the information which formed reasons to believe for escapement of the assessment was already available during the assessment proceedings and there was nothing new which had been brought on record, then it would be a clear case of change of opinion. The relevant finding of the Hon'ble High Court is reproduced as under:

"4. The fact that the reasons recorded by the AO for reopening the assessment are based entirely on the documents already filed by Assessee, cannot be disputed. Mr. Mistri tendered a compilation of documents containing copies of the return of income, the computation of total income, Form No. 3CD, Annual Report and the assessment order. In the annexure to the statement of income filed, there is mention of write off and provisions relating to prior years, which have been added and allowable expenses from the same being interest on Fixed Deposits and interest of Security Deposits have been deducted. The notes to computation also provides "The interest expense in respect of Security Deposit and Fixed Deposit has been reconciled during the previous year and a sum of Rs. 17,00,88,104/-towards the under provision of interest liability for Fixed Deposit and Rs. 2,38.96,444/- towards the under provision of interest liability for

Security Deposit, being the amounts determined and crystalized during the previous year has been claimed as allowable deduction."

5. Form No. 3CD filed by Assessee under Section 44AB of the Act, at Annexure-XV, mentions prior period income or expenditure of prior period credited or debited to the Profit and Loss Account amounting to Rs. 678,263,876/-, which is the amount, which was added in the annexure to statement of total income. In the Director's Report annexed to the annual returns, there is mention of provisions, contingencies and write offs - extra-ordinary items and it is disclosed that an amount of Rs. 17.01 crores was a shortfall in the General Ledger balance of Term Deposits and an amount of Rs. 2.39 crores was a shortfall in the General Ledger balance of Security Deposits. The Profit and Loss Account also provides for write offs and other provisions relating to prior years amounting to Rs. 6783 lakhs and in the schedules forming part of accounts, it is stated as under :

> *"Special provisions for interest expenses include,*
>
> *(a) an amount of Rs. 1701 lakhs, being the shortfall in the General Ledger balance as compared to the aggregate of Live Term Deposits in the books of the Bank. This being provision for under provided liability of prior years, is accounted as part of "Write off & other provisions relating to prior vears" in the current year Profit and Loss Account.*
>
> *(b) an amount of Rs. 239 lakhs, being the shortfall in the General Ledger balance of Security Deposits as compared to the aggregate of Live Security Deposits in the books of the Bank. This being provision for under provided liability of prior years, is accounted as part of "Write off & other provisions relating to prior years" in the current year Profit and Loss Account."*

6. Therefore, all the information which formed reason to believe escapement of income, was already made available during the assessment proceedings. There was nothing new, which has been brought on record because these materials were on the face of documents available before the AO. Therefore, the ITAT came to a conclusion that it was a clear case of change of opinion."

9.5 Further, the Hon'ble High Court in the case of Castrol India Ltd. (supra) has observed as under:

> *"19. However, Assessing Officers without appreciating the true import of the aforesaid decision of the Supreme Court, continue to reopen assessments on the ground of income having escaped assessment despite the fact that all the material and information was already*

available with him while passing the original assessment order. Furthermore, while conclusive proof of escapement of income may not be necessary to reopen an assessment, the least that is required is a requisite belief based on tangible material which was Shivgan not accessible to the AO or that which was deliberately withheld by Assessee, which then would amount to non-disclosure of relevant information. When an assessment is sought to be reopened within a period of four years of the end of the relevant assessment year, the test to be applied is whether there is tangible material to do so. What is tangible is something which is not illusory, hypothetical or a matter of conjecture. An AO, who has plainly ignored relevant materials in arriving at an assessment acts contrary to law. The facts in the present case clearly show that the AO was infact in the knowledge of and in possession of all the relevant details regarding the deductions on account of CSR. The computation sheets, the tax audit report, the receipts from the donees and the other relevant documents were all provided and disclosed by Petitioner. It is thus a clear case of 'change of opinion' by the AO. The notice of reopening assessment does not by any measure disclose any material leave aside any information leading to formation of cogent and requisite belief. The finding of the Apex Court in Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra) must not be used by AO to reopen assessments to review the original assessment order on the basis of a change of opinion of the AO, as done in the present case. Further, the reasons to believe notice itself indicates that the AO was already seized with information prior to passing of the original assessment order and as such, there is no tangible information on the basis of which he has allegedly formed the requisite belief."

9.6 In view of the above decision of the Hon'ble Jurisdictional High Court, it is settled that reopening of the assessment on the material and information which was already available on the record while passing the original assessment order, amounts to change of opinion which is not permitted in law. Further, In **CIT vs. Kelvinator of India Ltd. 256 ITR 1** , the Full Bench of the Delhi High Court was considering a case of reopening u/s 147 within 4 years from the end of the assessment year. The Court held that when a regular order of assessment is passed in terms of section 143 (3) of the Act, a presumption can be raised that such an order

has been passed on application of mind. It was held that if it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong. It was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. On appeal by the department to the **Supreme Court in 320 ITR 561(SC),** dismissing the appeal, held as under:

> *" On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that ...4/- www.taxguru.in - 4 - where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open.*

We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

> *"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.--A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the*

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

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

9.7 In our opinion, after completion of the assessment u/s 143(3) of the Act, for reopening of the assessment, there has to be some trigger by way of either information received from the external source or from the internal source and without such trigger reopening of the assessment merely to relook into the assessment on the issues, which had been considered during the regular assessment proceedings, will amount to review of the assessment order by the Assessing Officer, which is not permitted in law under the provisions of section 147 of the Act. The Assessing Officer can only reassess the assessment wherever income escaped assessment, and not the review the order passed by him. In view of the above discussion and respectfully following the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra)

and Castrol India Ltd. (supra), we set aside the finding of the Ld. CIT(A) on the issue of validity of the reassessment and we quash the reassessment proceedings. The ground No. 2 of the appeal of the assessee is accordingly allowed.

9.8 Since, we have already quashed the reassessment proceedings therefore, the ground Nos. 3 and 4 of the assessee challenging the merit of the addition and merely rendered academic and therefore, we are not adjudicating upon the same.

10. In the appeal for assessment year 2016-17, the assessee challenged validity of the reassessment on the ground of the change of opinion and also challenged the addition on merit whereas the Revenue has challenged the deletion of the claim of the other expenses of the assessee.

10.1 We have heard rival submission of the parties and perused the relevant material on record. For ready reference, the reasons recorded for the year under consideration are reproduced as under:

> *"Sir/ Madam/ M/s,*
>
> ***Subject: Communication of reasons of reopening u/s 147 for A.Y - 2016-17 in the case of UNION BANK OF INDIA reg.***
>
> *The assessee has filed the e-return electronically on 29.11.2016 declaring total income of Rs.3557,10,04,800/- under normal provision of the Income tax Act and offered book profit of Rs. 1351,60,22,686/-u/s 115JB of the Income tax Act. This case was selected for scrutiny and assessment for A.Y. 2016-17 was completed on 15.03.2019 after scrutiny and assessed income of Rs.5899,19,42,910/- under normal provision of the Income tax*

Act and Book profit of Rs.5732,81,61,169/- U/s 115JB of the Income tax Act.

2. Subsequently on perusal of the records it was observed that an amount of Rs.4291,01,61,000/- is debited as Provision and Contingencies to the Profit and loss account. However the assessee in their computation added back an amount of Rs.3715,28,10,596/- as Provision for Bad and Doubtful Debts (i.e NPA) and claimed an amount of Rs. 1937,62,60,435/- u/s 36(1)(viia) of the IT Act while arriving the taxable income. The assessee computation in this regard had also been accepted and the deduction of Rs. 2022,31, 14,876/- was allowed u/s 36(1)(viia) of the IT Act. Further it was noticed that the break of Rs.4291,01,61,000/- is given at point 11 under the head Additional disclosures (page 252 of Annual Report) in Notes to Accounts. As per the details the assessee had debited provision for NPA amounting to Rs.4655.03 Crore and adjusted the other provisions from it and debited the net Provision of Rs.4291,01,61,000/- to P&L Account.

It is pertinent to mention here that while computing the Book Profit an amount of Rs. 4291,01,61,000/- was added back as Disallowed for Provision of expenses.

Hence the Net Provision amounting to Rs.4291,01,61,000/- should have been added back while computing the Income, whereas only an amount of Rs.3715,28,10,596/-had been added back while computing the taxable income in assessment under normal provision of the IT Act. This has resulted in under assessment of income to the extent of Rs.575,73,50,404/-.

2.1 Therefore I am of the view that income to the extent of amount of Rs.575,73,50,404/-, as explained above, has escaped assessment.

2.2 Further, it was noticed that the assessee had claimed amounting to Rs. 1937,62,60,435/- as deduction under section 36(1)(viia) of the IT Act. As per their computation the assessee had claimed deduction of Rs. 1525,44,08,636/- i.e 10% on aggregate rural advance amounting to Rs. 15254.41 crore from the Rural branch and Rs.412,18,51,799/- as 7.5% of the Gross total income. The assessee during assessment furnished the list of Rural Branch and aggregate average advance made during the year in support of their claim. It was noticed from the list, that huge advances were shown against few Branches and claimed it as Rural branch eligible for deduction under section 36(1)(viia) of the IT Act.

The categories of Branches were test checked from RBI press release dated 1 st November 2011 i.e Branch locator as per census 2011 and found that eight branches were classified as Semi Urban and metropolitan Branch under the column Population Group by RBI, where as assessee had considered it as Rural Branch. As per census of 2011, RBI had classified the six branches as Semi Urban Branch and two branches as Metropolitan Branch (list Attached). The total average advance amounting

to Rs.881.06 crore is shown against these branches and RBI notified these branches as Semi urban and Metropolitan Branch, hence the advances made from these branches is not qualified for deduction under section 36(1)(viia) of the IT Act. Hence required to be disallowed while assessment. However, it was allowed in the assessment and has resulted in excess grant of deduction of Rs.88.10 crore (i.e 10% of Rs.881.10 crore) u/s 36(1)(viia) of the IT Act. Due to that income was under assessed to that extent.

As per RBI Branch locator as per census 2011 Categories

State	*District*	*Bank*	*Centre*	*Population*	*Amount*
Uttar Pradesh	*Agra*	*Union Bank of India*	*Malpura*	*Semi-urban*	*70.91*
Uttar Pradesh	*Ghazipur*	*Union Bank of India*	*Karimuddinpur*	*Semi-urban*	*20.29*
Uttar Pradesh	*Mathura*	*Union Bank of India*	*Avarni*	*Semi-urban*	*57.3*
Madhya Pradesh	*Indore*	*Union Bank of India*	*Indore-Mid Corporate*	*Metropolitan*	*528.39*
Andhra Pradesh	*Krishna*	*Union Bank of India*	*Enikepadu-Grand*	*Metropolitan*	*88.4*
Maharashtra	*Nagpur*	*Union Bank of India*	*Kandri*	*Semi-urban*	*37.99*
Maharashtra	*Raigad*	*Union Bank of India*	*Kharghar*	*Semi-urban*	*31.13*
Maharashtra	*Raigad*	*Union Bank of India*	*Kharghar Sector-4*	*Semi Urban*	*46.65*

2.3 Therefore I am of the view that income to the extent of amount of Rs.88,10,60,000/-, as explained above, has escaped assessment.

2.4 Further it was observed from the Profit and loss account that the assessee had offered Miscellaneous Income of Rs. 1329,78,42,000/-under Other Income (Schedule-14) and also debited an amount of Rs. 1193,52,28,000/- as Other Expenditure (schedule-16) under the head Operating Expenses. However the minor head wise detail of the miscellaneous income and expenditure was not available in the records. In absence of details the adjustment (i.e addition and deduction) made by the assessee in their computation while computing the taxable income could not be verified.

2.5 Therefore I am of the view that income to the extent of amount of Rs. 1193,52,28,000/-, as explained above, has escaped assessment.

DEEPAK SHUKLA

DCIT/ACIT, Cir.-3(4), Mumbai

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10.2 We note that in the instant assessment year also the Assessing Officer has reopened the assessment on perusal of the records available with him and no new information or material to trigger for reopening has been referred by the Assessing Officer. With regard to the 'miscellaneous income', the Assessing Officer has recorded reasons for verification only.

10.3 We have already held that the Assessing Officer is not permitted to reopen the assessment only on the basis of the material already available on record, without any fresh information or the material, and therefore, following our finding in assessment year 2017-18, the reassessment proceedings for assessment year 2016-17 is also held to be based on the change of opinion, which is not permitted in law, therefore, we quash the reassessment proceedings for assessment year 2016-17 also. The grounds of appeal of the assessee challenging validity of the reassessment are accordingly allowed.

10.3 Since, we have already quashed the reassessment proceedings, the ground on merit raised by the assessee as well as Revenue are rendered merely academic and therefore, we are not adjudicating upon the same.

11. In the result, the appeal of the assessee for assessment year 2016-17 and 2017-18 are allowed whereas appeal of the Revenue for assessment year 2016-17 is dismissed.

Order pronounced in the open Court on 11/07/2024.

Sd/-	**Sd/-**
(SUNIL KUMAR SINGH)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 11/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai